

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 C.A. No. CV-0401945(JBW)(SMG)

4 * * * * *

5 BARBARA SCHWAB, et al, Individually *

6 and on behalf of a class of all *

7 others similarly situated, *

8 Plaintiffs *

9 v. *

10 PHILIP MORRIS USA, INC., et al, *

11 Defendants *

12 * * * * *

13 PAGES 1-328

14 VIDEOTAPED DEPOSITION OF JOHN R.

15 HAUSER, Sc.D., a witness called on behalf of

16 the Defendant R.J. Reynolds Tobacco Company,

17 pursuant to the Federal Rules of Civil

18 Procedure, before Jessica L. Williamson,

19 Registered Merit Reporter, Certified

20 Realtime Reporter and Notary Public in and

21 for the Commonwealth of Massachusetts, at

22 the Offices of Goodwin Procter, LLC, 53

23 State Street, Boston, Massachusetts, on

24 Thursday, March 23, 2006, commencing at

25 10:02 a.m.

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<p>1 JOHN R. HAUSER, Sc.D., 2 a witness called on behalf of the Defendant 3 R.J. Reynolds Tobacco Company, having first 4 been duly sworn, was deposed and testified 5 as follows: 6 7 DIRECT EXAMINATION 8 9 BY MR. GROSSMAN: 10 Q. Dr. Hauser, it's very nice to meet you. 11 A. Thank you. 12 Q. Thank you for coming. I'm going to be 13 asking you a number of questions today and 14 tomorrow. If there's any question that you 15 don't hear, will you let me know? 16 A. Yes, I will. 17 Q. If there's any question you don't 18 understand, will you let me know? 19 A. Yes, I will. 20 Q. Now, your deposition has been taken a number 21 of times, I gather? 22 A. I have had -- I've taken -- I've given 23 testimony in deposition a number of times. 24 Q. Have you also testified in court? 25 A. I have testified in court.</p>	<p>1 form. 2 A. Well, I have conducted a study that's 3 described in my expert report. 4 Q. You have submitted two expert reports in 5 this case, one in August and one in 6 December. Are you referring to that -- 7 you're referring to both in the singular, 8 for all intents and purposes? 9 A. Both of those reports describe the same 10 study. 11 Q. Do you have any ongoing studies apart from 12 the study described in those reports? 13 A. Should I -- should additional information 14 become available, I'll certainly analyze 15 that information. 16 Q. Do you have any ongoing studies currently 17 apart from the information described in 18 those reports? 19 A. I have conducted one study, and that's 20 described in the report. 21 Q. You've completed one study; is that correct? 22 A. I have completed one study. 23 Q. Is that your testimony? 24 A. I have completed one study. 25 Q. You also have a -- you have engaged in the</p>
Page 11	Page 13
<p>1 Q. How many times have you testified in court? 2 A. Oh, four that I can remember, perhaps more. 3 It's on my curriculum vitae. 4 Q. And how many times, approximately, have you 5 testified at deposition? 6 A. That's also in my curriculum vitae. I don't 7 recall the exact number. 8 Q. Approximately 20? 9 A. It would be in the ballpark of 20, but, 10 again, without looking at my vitae I've not 11 counted them. 12 Q. Are you ready to testify in this case? Have 13 you prepared all of your testimony for trial 14 so far as you can tell? 15 MR. GALLAGHER: Objection to the 16 form. 17 A. I am ready to testify in this case. Should 18 more information become available, I will 19 actually take a look at that. Should I be 20 asked additional questions, I'll take a look 21 at that. 22 Q. Have you conducted all studies that you've 23 been asked to conduct by plaintiffs' 24 counsel? 25 MR. GALLAGHER: Objection to the</p>	<p>1 study which you've described as having been 2 aborted in the footnote to your December 3 report. Apart from that aborted study and 4 the study described in the report, have you 5 conducted any other studies in this case, 6 completed or otherwise? 7 A. The way you've described the study as 8 "aborted," I'm not sure that's the adjective 9 to use to describe. In fact, it wasn't a 10 study, it was just a pilot study. And I'm 11 not relying upon the information from that 12 pilot study in my expert report. 13 MR. GROSSMAN: Move to strike as 14 not responsive. 15 Q. Have you conducted or are you conducting any 16 study other than those two, however you 17 describe them, pilot study and the study 18 listed in your report? 19 A. Do you mean in this case? 20 Q. In this case. 21 A. Okay. In this case I have no additional 22 studies ongoing, but should additional 23 information come to light, I will analyze 24 that information. 25 Q. Okay. There are none ongoing and there are</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. What is your consulting fee?</p> <p>2 A. \$650 an hour.</p> <p>3 Q. And is that typically billed through AMS?</p> <p>4 A. Not all the time.</p> <p>5 Q. Sometimes you bill directly yourself?</p> <p>6 A. Sometimes I bill it directly. Sometimes I</p> <p>7 bill it through other entities.</p> <p>8 Q. What other entities?</p> <p>9 A. Whatever I'm working with at the time.</p> <p>10 Q. Other consulting firms?</p> <p>11 A. Sometimes I would bill it through other</p> <p>12 consulting firms.</p> <p>13 Q. Do you have any rate other than \$650 per</p> <p>14 hour that you charge to corporations or to</p> <p>15 counsel in litigation?</p> <p>16 A. Not at the current time.</p> <p>17 Q. Okay. Approximately what percentage of your</p> <p>18 time do you devote to teaching and writing</p> <p>19 and research, and academic research?</p> <p>20 A. Approximately -- well, probably higher than</p> <p>21 80 percent.</p> <p>22 Q. Approximately what percent of your time do</p> <p>23 you spend consulting with counsel on</p> <p>24 litigation?</p> <p>25 A. Probably 20 percent or less.</p>	<p style="text-align: right;">Page 20</p> <p>1 percent.</p> <p>2 Q. And in the prior year?</p> <p>3 A. I would have to go back and look at the</p> <p>4 details, but it's in the ballpark of 50</p> <p>5 percent, maybe slightly higher.</p> <p>6 Q. Let me hand you what's been marked for</p> <p>7 identification purposes as Hauser Exhibit 2,</p> <p>8 which was included as Exhibit A to your</p> <p>9 report and is your CV, your academic vitae.</p> <p>10 A. This is my academic vitae dated as of April</p> <p>11 20, 2005 --</p> <p>12 Q. Yes.</p> <p>13 A. -- for the record.</p> <p>14 Q. In reviewing that I did not see any prior</p> <p>15 work in the cigarette industry. Is it</p> <p>16 accurate to say that you have never been a</p> <p>17 consultant in the cigarette industry?</p> <p>18 A. To the best of my recollection, I have not</p> <p>19 been a consultant for -- with regard to</p> <p>20 cigarettes.</p> <p>21 Q. Have you been a consultant for the beer</p> <p>22 industry at any point?</p> <p>23 A. Yes.</p> <p>24 Q. Which product?</p> <p>25 A. I am the Kirin professor of marketing at</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And approximately what percent of your time</p> <p>2 do you devote to consulting with</p> <p>3 corporations?</p> <p>4 A. Well, I haven't added everything up, so my</p> <p>5 total consulting is probably about 20</p> <p>6 percent or less, and that's divided between</p> <p>7 both litigation and non-litigation</p> <p>8 consulting.</p> <p>9 Q. Of your consulting what percentage is</p> <p>10 litigation consulting and what percentage is</p> <p>11 consulting with corporations?</p> <p>12 MR. GALLAGHER: Objection to the</p> <p>13 form.</p> <p>14 A. Of -- would you please reask the question?</p> <p>15 Q. Of the time that you spend consulting what</p> <p>16 percentage do you devote to litigation</p> <p>17 consulting?</p> <p>18 A. Of the percent, that varies year to year.</p> <p>19 Q. Well, in the past year, what percentage of</p> <p>20 your consulting time did you devote to</p> <p>21 litigation?</p> <p>22 MR. GALLAGHER: Objection to the</p> <p>23 form.</p> <p>24 A. Oh, it's certainly less than 100 percent,</p> <p>25 and it might be slightly more than 50</p>	<p style="text-align: right;">Page 21</p> <p>1 MIT, and in that regard I have visited</p> <p>2 Kirin, which is in Japan, a few times.</p> <p>3 Q. Have you consulted with them on the</p> <p>4 marketing of Kirin beer in the United</p> <p>5 States?</p> <p>6 A. I have been briefed on their activities in</p> <p>7 the United States.</p> <p>8 MR. GROSSMAN: Move to strike as</p> <p>9 non-responsive.</p> <p>10 Q. Have you consulted with Kirin on the</p> <p>11 marketing of beer in the United States?</p> <p>12 MR. GALLAGHER: I'll object to the</p> <p>13 form. I don't know how this is irrelevant</p> <p>14 to -- how this is relevant to the expert</p> <p>15 opinion that Dr. Hauser's giving in this</p> <p>16 case.</p> <p>17 MR. GROSSMAN: I would agree with</p> <p>18 your first comment that I don't know how</p> <p>19 it's irrelevant, but I'll continue.</p> <p>20 Q. Could you please answer the question?</p> <p>21 A. As I've stated, I have been briefed by</p> <p>22 employees of the Kirin Brewing Company about</p> <p>23 their marketing activities in the United</p> <p>24 States. I don't know if you would consider</p> <p>25 that consulting or not.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. Has Kirin ever hired you to review the 2 market for beer in the United States? 3 A. My relationship with the Kirin Brewery 4 Company is that they have donated money to 5 MIT, which is actually unrestricted, but I 6 do -- many times I've advised theses from 7 their students who have come to MIT for 8 education. Some of these theses have 9 analyzed beer markets. Some of them 10 analyzed other markets that Kirin have been 11 in. Some of them are just general theses. 12 I do not know if you would consider that 13 consulting. 14 Q. Have you ever done any -- conducted any 15 study of the market for light beer in the 16 United States? 17 A. Not that I recall. 18 Q. Have you ever conducted any study of 19 marketing of light beer in the United 20 States? 21 A. Not that I recall. 22 Q. Have you ever conducted any study of any 23 product labeled as light in the United 24 States? 25 A. Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 No. 3. And that consists, excuse me, of 2 pages from the website of Applied Marketing 3 Science. If you could take a look at that 4 and tell me if you're familiar with it. 5 (Witness reviews document.) 6 A. This appears to be a printout of parts of 7 the AMS website. AMS is Applied Marketing 8 Science, Incorporated. It's dated 9 3/21/2006. 10 Q. Okay. Thank you. It says on the first page 11 of the printout that you have under "VOC," 12 "Order a free copy of the classic article 13 The Voice of the Customer by Abby Griffin 14 and AMS co-founder and MIT professor John R. 15 Hauser." 16 You are a co-founder of AMS? 17 A. I am a co-founder of AMS. 18 Q. And you are also a senior consultant to AMS? 19 A. I believe that's the title they've given me. 20 Q. Do you have an ownership interest in AMS? 21 A. Yes, I do. 22 Q. What is your ownership interest? 23 A. I don't know the exact numbers, but it's in 24 the ballpark of 10 percent. 25 Q. Has it been 10 percent since the founding?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. What product? 2 A. In -- you have in front of you a report 3 which is a study of light cigarettes. 4 Q. Apart from the report that you have 5 submitted in this case, have you ever 6 conducted any study of any product labeled 7 as "light" in the United States? 8 A. Apart from the work that I've done in 9 support of litigation in this case, I do not 10 recall any particular studies of products 11 labeled as "light." 12 Q. Okay. So before you were hired by 13 plaintiffs' counsel in this case, you had 14 never done a study on light cigarettes, you 15 had never done a study on light beer, and 16 you had never done a study on any other 17 product labeled as "light" in the United 18 States; is that correct? 19 A. To the best of my recollection, I have not 20 done any studies that are specifically 21 designed to study "light," the issue of the 22 "light" adjective as described; however, 23 I've certainly studied many products. 24 Q. Let me hand you what has been marked for 25 identification purposes as Hauser Exhibit</p>	<p style="text-align: right;">Page 25</p> <p>1 A. It's been approximately that. As new people 2 have come in, they get stock options, and I 3 haven't tracked it. 4 Q. In this case when you were engaged to 5 undertake a survey, you conducted that 6 through the auspices of AMS? 7 MR. GALLAGHER: Objection to the 8 form. 9 A. Well, employees of AMS were working at my 10 direction. 11 Q. Do you have use other consulting companies 12 apart from AMS to conduct surveys on your 13 behalf? 14 MR. GALLAGHER: Objection to the 15 form. 16 A. Well, the question is, are other entity -- 17 other survey companies involved in studies 18 that I conduct? 19 Q. No. Do you use companies that provide 20 similar services to AMS when you're engaged 21 by counsel to perform surveys of the kind 22 that you were asked to in this case? 23 MR. GALLAGHER: Objection to the 24 form. 25 A. Well, the survey in this case is very</p>

<p style="text-align: right;">Page 38</p> <p>1 difference between the mapping from physical</p> <p>2 characteristics into perceptions and the</p> <p>3 difference from physical characteristics and</p> <p>4 psychosocial cues into perceptions.</p> <p>5 Q. What is the Brunswick lens model?</p> <p>6 A. The Brunswick lens model is a model from</p> <p>7 psychology of the way the consumers form</p> <p>8 their perceptions preferences to make</p> <p>9 choices.</p> <p>10 Q. And indeed, consumers often will approach a</p> <p>11 product with a preconceived view of the --</p> <p>12 of preferences; is that correct?</p> <p>13 MR. GALLAGHER: Objection to the</p> <p>14 form.</p> <p>15 A. I -- what do you mean by pre --</p> <p>16 Q. Well, I will rephrase the question.</p> <p>17 Are you familiar with any marketing</p> <p>18 studies of Coke and Pepsi?</p> <p>19 A. I have read about various studies with</p> <p>20 respect to Coke and Pepsi.</p> <p>21 Q. In fact, there are studies that show that</p> <p>22 you can -- that brand loyalty is so great</p> <p>23 with Coke and Pepsi that you may not be able</p> <p>24 to give away the competing product to those</p> <p>25 people who drink -- I'll rephrase the</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Would it surprise you if they did?</p> <p>2 MR. GALLAGHER: Objection to the</p> <p>3 form.</p> <p>4 A. Conjoint analysis is a well-regarded market</p> <p>5 research technique. Coca-Cola is a</p> <p>6 marketing company, and if Coca-Cola were to</p> <p>7 use well-regarded marketing research</p> <p>8 techniques, that would be the normal course</p> <p>9 of business.</p> <p>10 Q. There have been many products for which</p> <p>11 conjoint analysis was used that have failed</p> <p>12 in the marketplace; is that correct?</p> <p>13 A. The purpose of conjoint analysis is to</p> <p>14 understand consumer preferences, and it may</p> <p>15 be that the conjoint analysis is accurate</p> <p>16 and confirmed the product is launched</p> <p>17 anyhow.</p> <p>18 MR. GROSSMAN: Move to strike as</p> <p>19 non-responsive.</p> <p>20 Q. There have been many products for which</p> <p>21 conjoint analysis has been used that have</p> <p>22 failed in the marketplace; isn't that</p> <p>23 correct?</p> <p>24 MR. GALLAGHER: Answer as you</p> <p>25 believe appropriate, Dr. Hauser.</p>
<p style="text-align: right;">Page 39</p> <p>1 question.</p> <p>2 The brand loyalty is so great with</p> <p>3 Coke and Pepsi that there are studies</p> <p>4 showing that you can't give Pepsi to people</p> <p>5 who feel a strong attachment to Coke and you</p> <p>6 can't give Coke even for free to people who</p> <p>7 feel a strong attachment to Pepsi; is that</p> <p>8 correct?</p> <p>9 MR. GALLAGHER: Objection to the</p> <p>10 form.</p> <p>11 A. I don't recall seeing those studies.</p> <p>12 Q. Have you seen studies on brand loyalty of</p> <p>13 Coke and Pepsi drinkers?</p> <p>14 A. I have seen studies and have actually heard</p> <p>15 about studies with respect to Coke and taste</p> <p>16 tests and Pepsi and taste tests.</p> <p>17 Q. And have -- what's the scope of those</p> <p>18 studies, and what did they find?</p> <p>19 A. I do recall speaking to someone at Coca-Cola</p> <p>20 about some of the taste test studies that</p> <p>21 they had done prior to the launch of what at</p> <p>22 the time was called New Coke.</p> <p>23 Q. Did they conduct any conjoint analysis with</p> <p>24 regard to New Coke?</p> <p>25 A. I do not know.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. I do not know that for sure.</p> <p>2 Q. But you have no reason to believe otherwise?</p> <p>3 MR. GALLAGHER: Objection to the</p> <p>4 form.</p> <p>5 Q. Is that correct?</p> <p>6 A. You're making a statement that I have no way</p> <p>7 of verifying.</p> <p>8 Q. Dr. Hauser, we've discussed products with</p> <p>9 the modifier "light." Have you ever done a</p> <p>10 study of any product that had the modifier</p> <p>11 "low fat"?</p> <p>12 A. I have been involved peripherally in many</p> <p>13 studies; however, I do not recall -- I do</p> <p>14 not recall any specific study with regard to</p> <p>15 low fat.</p> <p>16 Q. Okay. As we sit here today, you do not</p> <p>17 recall any study that you have ever been</p> <p>18 involved in that considered products that</p> <p>19 were designated by their manufacturers or</p> <p>20 distributors as low fat; is that correct?</p> <p>21 MR. GALLAGHER: Objection to the</p> <p>22 form.</p> <p>23 A. I do not recall any products that were</p> <p>24 designated as low fat.</p> <p>25 Q. As we sit here today, do you recall having</p>

<p style="text-align: right;">Page 42</p> <p>1 ever worked on the study of any product</p> <p>2 designated by its manufacturer or marketer</p> <p>3 as low tar?</p> <p>4 A. Yes.</p> <p>5 Q. Apart from your work on behalf of</p> <p>6 plaintiffs' counsel in this case, as we sit</p> <p>7 here today, do you recall having worked on</p> <p>8 any study involving any product that was</p> <p>9 designated by its manufacturer or marketer</p> <p>10 as low tar?</p> <p>11 MR. GALLAGHER: Objection to the</p> <p>12 form.</p> <p>13 A. I have conducted studies in this case that</p> <p>14 would relate to products that might be</p> <p>15 designated as low tar. Outside of this case</p> <p>16 and beyond that, I do not recall of any</p> <p>17 products that I've studied that have been</p> <p>18 designated as low tar which I've done any</p> <p>19 formal market research.</p> <p>20 Q. Have you ever done any formal market</p> <p>21 research on any product that was designated</p> <p>22 by its manufacturer or marketer as magna or</p> <p>23 super size or anything else relating to the</p> <p>24 size or intensity of the product?</p> <p>25 MR. GALLAGHER: Objection to the</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. GALLAGHER: Objection to the</p> <p>2 form.</p> <p>3 A. I do not recall the specific designation of</p> <p>4 the specific words.</p> <p>5 Q. Okay. Now, Doctor, in your CV you list a</p> <p>6 number of publications, including</p> <p>7 publications in periodical literature, peer-</p> <p>8 reviewed periodical literature. You're not</p> <p>9 always the first listed author, correct?</p> <p>10 A. Sometimes I'm not the first listed author,</p> <p>11 yes.</p> <p>12 Q. Regardless of whether you're the first</p> <p>13 listed author, the last listed author or</p> <p>14 somewhere in between, you always read the</p> <p>15 article before it's submitted for</p> <p>16 publication; is that correct?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And you always agree with the article before</p> <p>19 it's submitted for publication; is that</p> <p>20 correct?</p> <p>21 A. If it's listed in my CV, yes.</p> <p>22 Q. If you're listed as the author; is that</p> <p>23 correct?</p> <p>24 A. If I'm listed as the author.</p> <p>25 Q. Now, in this case AMS engaged Greenfield</p>
<p style="text-align: right;">Page 43</p> <p>1 form.</p> <p>2 A. I have done studies relating to the size of</p> <p>3 the product.</p> <p>4 MR. GALLAGHER: I'm sorry, size of</p> <p>5 what?</p> <p>6 THE WITNESS: The size of the</p> <p>7 product.</p> <p>8 Q. It may be that my question wasn't easily</p> <p>9 understood. Some products -- just as some</p> <p>10 products are called light, some products are</p> <p>11 called super size or the equivalent, like</p> <p>12 very large soft drinks at the 7-Eleven. Are</p> <p>13 you familiar with such marketing --</p> <p>14 MR. GALLAGHER: Objection to the</p> <p>15 form.</p> <p>16 Q. -- names?</p> <p>17 A. I am familiar with the term "super sized."</p> <p>18 Q. Have you ever done any work with regard to a</p> <p>19 product that was called super sized?</p> <p>20 A. I have done work in market research where</p> <p>21 products that were super sized, in your</p> <p>22 words, super sized, I mean, large, were</p> <p>23 involved.</p> <p>24 Q. Were they designated as super sized by their</p> <p>25 manufacturer?</p>	<p style="text-align: right;">Page 45</p> <p>1 Online to conduct a survey; is that correct?</p> <p>2 A. No.</p> <p>3 Q. Did Greenfield Online work with AMS in this</p> <p>4 case?</p> <p>5 A. Greenfield worked with AMS on this case.</p> <p>6 Q. In what capacity?</p> <p>7 A. Greenfield provided access to their panel.</p> <p>8 Q. Access to their panel --</p> <p>9 A. Their panel of consumers.</p> <p>10 Q. And the panel of consumers is on the</p> <p>11 Internet; is that correct?</p> <p>12 A. They have an Internet-based panel.</p> <p>13 Q. And by what means did Greenfield provide</p> <p>14 access to the Internet-based panel that they</p> <p>15 had?</p> <p>16 A. Well, this is a fairly complex procedure</p> <p>17 that's described fully in my report.</p> <p>18 Q. In providing access to its panel, was</p> <p>19 Greenfield involved at all in the</p> <p>20 communication with panel members?</p> <p>21 MR. GALLAGHER: Objection to the</p> <p>22 form.</p> <p>23 A. Greenfield sent out an e-mail at my</p> <p>24 direction.</p> <p>25 Q. Did you draft the e-mail?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. I approved the e-mail. It's a fairly 2 standard e-mail that Greenfield does send 3 out to their panel members. 4 Q. After drafting that e-mail, did Greenfield 5 do anything else in work on the survey that 6 you reported on in this case? 7 A. Well, Greenfield implemented the sampling 8 procedure that I set out. 9 Q. And did they do anything else? 10 A. That's fully described in my report. 11 Q. Did they do anything else? 12 A. I have described in my report Greenfield's 13 role in this, and I've just testified as to 14 what they have done. 15 Q. Do you recall them doing anything else apart 16 from what you say you described in your 17 report? 18 A. Well, as described in my report, they 19 provided the sample. They, of course, sent 20 out that sample to -- that e-mail to the 21 respondents for them to come in to our 22 server, and they implemented the sampling 23 plan that I've described. This is done 24 electronically. 25 Now, obviously Greenfield contacts</p>	<p style="text-align: right;">Page 48</p> <p>1 national data on Census region, sex, age, 2 and household income"? 3 A. Yes. 4 Q. What is a census region? 5 A. A census region is a subset of the United 6 States defined by the U.S. Census Bureau. 7 Q. A census region is a regional as opposed to 8 demograph -- a census region refers to a 9 physical region; is that correct? 10 A. Yes, it does. 11 Q. How many census regions are there? 12 A. Depends upon how they're aggregated. 13 Q. How did you aggregate it? 14 MR. GALLAGHER: Objection to the 15 form. 16 A. That's described in this report. 17 Q. Where? 18 A. In the next sentence. 19 Q. Four census regions, what were the four 20 census regions? 21 A. That's described in one of the exhibits, and 22 they were chosen to be collectively 23 exhaustive and mutually exclusive. 24 Q. Apart from dividing the country into four 25 regions, the usual division of gender into</p>
<p style="text-align: right;">Page 47</p> <p>1 their respondents for other studies to 2 recruit them in other things. 3 Q. Could you turn with me to your expert 4 report, which was previously marked as 5 Exhibit No. 1, Page 12. Paragraph 24 you 6 say, "For this survey, potential respondents 7 were selected at random from Greenfield 8 Online's database and sent an invitation to 9 go to a special website to complete the 10 survey." 11 How do you know they were selected at 12 random? 13 A. We instructed Greenfield Online to select 14 them at random based upon the sampling 15 procedure. 16 Q. And what was the sampling procedure? 17 A. Well, this is described fully in my report. 18 If you would like, we can go over it. 19 Q. Where in your report are you referring to? 20 A. There are many places -- there may be other 21 places in the report, but, for example, 22 Paragraph 26. 23 Q. And in that you say, "To assure a nationally 24 representative sample of respondents, quotas 25 were set so the sample would match the</p>	<p style="text-align: right;">Page 49</p> <p>1 two parts, age which was divided into three 2 segments; is that correct? 3 A. Age was divided into three segments. 4 Q. And household income was divided into three 5 segments; is that correct? 6 A. Yes. 7 Q. There were no other divisions of the 8 respondents for the sample; is that correct? 9 MR. GALLAGHER: Objection to the 10 form. 11 A. We were attempting to get a nationally 12 representative sample, as I've indicated, 13 representative and which we divided into 72 14 total subsets of that which are proportional 15 to sex, age, household income and region, as 16 indicated in the report. 17 MR. GROSSMAN: Move to strike as 18 non-responsive. 19 Q. There were four regions you said, there were 20 two sexes, there were three age groups, and 21 there were three categories of household 22 income. Apart from those four criteria, you 23 have no other demographic information about 24 any of the respondents; is that correct? 25 A. I used -- as is a very acceptable method to</p>

<p style="text-align: right;">Page 50</p> <p>1 obtain a representative sample, I divided</p> <p>2 the sample into 72 regions and then put the</p> <p>3 quota sampling within that. I believe that</p> <p>4 that was fully adequate to provide a</p> <p>5 representative sample.</p> <p>6 MR. GROSSMAN: Move to strike as</p> <p>7 non-responsive.</p> <p>8 Q. Will you please answer the question?</p> <p>9 MR. GALLAGHER: Objection, asked</p> <p>10 and answered. If you have anything to add,</p> <p>11 you can do so, Dr. Hauser.</p> <p>12 Q. Doctor, did you have -- did you -- I'm not</p> <p>13 asking you whether you thought it was</p> <p>14 adequate. Do you understand?</p> <p>15 MR. GALLAGHER: Objection.</p> <p>16 Q. I'm asking you whether you had any criteria</p> <p>17 other than the four census regions, the two</p> <p>18 sexes, the three age groups and the three</p> <p>19 household income segments that you had</p> <p>20 demographic information on about the</p> <p>21 respondents to the survey. The answer is</p> <p>22 yes or no. What is the answer?</p> <p>23 MR. GALLAGHER: Objection to the</p> <p>24 form. Doctor, if you can't answer it yes or</p> <p>25 no, answer it how you think is appropriate.</p>	<p style="text-align: right;">Page 52</p> <p>1 American.</p> <p>2 Q. What percentage of African American smokers</p> <p>3 smoke Newport?</p> <p>4 A. I do not know, sitting here today, what</p> <p>5 percentage of African American smokers smoke</p> <p>6 Newport.</p> <p>7 Q. What percentage of Hispanic smokers smoke</p> <p>8 Newport?</p> <p>9 A. I do not know, sitting here today, what</p> <p>10 percentage of Hispanic smokers smoke</p> <p>11 Newport.</p> <p>12 Q. Did you ever know?</p> <p>13 A. I do not recall if I knew what percentage of</p> <p>14 Hispanic smokers were smokers of Newport.</p> <p>15 Q. Do you know or did you ever know what</p> <p>16 percentage of Newport smokers are Hispanic?</p> <p>17 A. I believe you've asked that question</p> <p>18 already.</p> <p>19 Q. No, I didn't. I asked you --</p> <p>20 A. Will you read the record --</p> <p>21 Q. I asked you what percentage of Hispanic</p> <p>22 smokers smoked Newport. Now I'm asking you</p> <p>23 what percentage of Newport smokers are</p> <p>24 Hispanic?</p> <p>25 A. Oh.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. We have other information about these</p> <p>2 respondents.</p> <p>3 Q. What other information about the respondents</p> <p>4 do you have?</p> <p>5 A. For example, we know whether or not they</p> <p>6 were light smokers -- light cigarette</p> <p>7 smokers.</p> <p>8 Q. Did you have any other demographic</p> <p>9 information about them?</p> <p>10 A. I'm trying to recall if we collected any</p> <p>11 additional information. I did not feel it</p> <p>12 was necessary to use any additional</p> <p>13 information in the selection of a</p> <p>14 representative sample.</p> <p>15 Q. What percentage of the Newport smokers are</p> <p>16 black?</p> <p>17 MR. GALLAGHER: Objection to the</p> <p>18 form. Do you mean African American?</p> <p>19 MR. GROSSMAN: Yes.</p> <p>20 A. Okay. I do not know, sitting here today,</p> <p>21 how many Newport smokers are African</p> <p>22 American.</p> <p>23 Q. Did you ever know?</p> <p>24 A. I did not -- I do not recall knowing what</p> <p>25 percentage of Newport smokers are African</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Do you understand the difference?</p> <p>2 A. I thought you asked both of those questions.</p> <p>3 Q. No, I didn't.</p> <p>4 A. Okay. Would you please reask that?</p> <p>5 Q. What percentage of Newport smokers are</p> <p>6 Hispanic?</p> <p>7 A. I do not know, sitting here today, what</p> <p>8 percentage of Newport smokers are Hispanic.</p> <p>9 Q. What percentage of cigarettes marketed in</p> <p>10 the United States carry the word "light"</p> <p>11 unmodified by the word "ultra" or any other</p> <p>12 modifier such as "super"?</p> <p>13 A. My survey, as is indicated, is basically</p> <p>14 targeted towards light smokers, and we</p> <p>15 selected a randomly -- sorry, a</p> <p>16 representative sample to obtain light</p> <p>17 smokers. There is no reason for me to know,</p> <p>18 although I might be able to back it out of</p> <p>19 the data, what percent of that sample are</p> <p>20 light smokers.</p> <p>21 MR. GROSSMAN: Move to strike as</p> <p>22 not responsive.</p> <p>23 Q. Do you know what percentage of the market of</p> <p>24 cigarettes sold in the United States today</p> <p>25 involve cigarettes that are designated</p>

<p style="text-align: right;">Page 58</p> <p>1 Exhibit 4. This is the chart of the "Top 50</p> <p>2 Brand/Styles based on MSA data - 2002." Do</p> <p>3 you see that?</p> <p>4 A. I see Exhibit 4, yes.</p> <p>5 Q. Do you know what the MSA is?</p> <p>6 A. MSA. Could you give me what it stands for?</p> <p>7 Q. Do you know -- have you ever heard the term</p> <p>8 "MSA"?</p> <p>9 A. I've heard the term "MSA" quite often, but I</p> <p>10 don't know what it means in this context.</p> <p>11 Q. I show you the agreement reached between the</p> <p>12 cigarette companies and 46 states in</p> <p>13 approximately 1997 settling cases that were</p> <p>14 brought by those states.</p> <p>15 MR. GALLAGHER: It was 1998.</p> <p>16 MR. GROSSMAN: 1998, thank you.</p> <p>17 A. I have general lay knowledge that there was</p> <p>18 some cigarette settlement.</p> <p>19 MR. GALLAGHER: Can I ask you what</p> <p>20 the source of this document is, please?</p> <p>21 MR. GROSSMAN: As we sit here, I</p> <p>22 don't know.</p> <p>23 MR. GALLAGHER: You don't know</p> <p>24 whether it's an FTC report or...</p> <p>25 MR. GROSSMAN: I do not know. I</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Doctor, let me hand you what's been marked</p> <p>2 for identification purposes as Hauser</p> <p>3 Exhibit No. 5.</p> <p>4 (Discussion off the record.)</p> <p>5 MR. GALLAGHER: And is this</p> <p>6 document intended to be incomplete? Because</p> <p>7 it is.</p> <p>8 MR. GROSSMAN: It is incomplete,</p> <p>9 and I just pointed that out to my colleague.</p> <p>10 We're going to get a complete one.</p> <p>11 MR. GALLAGHER: Okay. Great.</p> <p>12 Thank you.</p> <p>13 MR. GROSSMAN: Let's mark this as</p> <p>14 Exhibit 6.</p> <p>15 (Exhibit No. 6, FTC document headed</p> <p>16 "'Tar,' Nicotine, and Carbon Monoxide of the</p> <p>17 Smoke of 1294 Varieties of Domestic</p> <p>18 Cigarettes for the Year 1998," Issued 2000,</p> <p>19 marked for identification.)</p> <p>20 Q. Dr. Hauser, I've just handed you what's been</p> <p>21 marked for identification purposes as Harris</p> <p>22 Exhibit 6 --</p> <p>23 MR. GALLAGHER: No, Hauser.</p> <p>24 Q. I'm sorry, Hauser Exhibit No. 6, which is a</p> <p>25 copy -- a complete copy of the Federal Trade</p>
<p style="text-align: right;">Page 59</p> <p>1 will give him an FTC report next.</p> <p>2 BY MR. GROSSMAN:</p> <p>3 Q. Doctor, do you see "Total US" and then there</p> <p>4 are -- it says "Marlboro Lights LT 85 BX,"</p> <p>5 market share below that, it says "Marlboro</p> <p>6 FF"?</p> <p>7 MR. GALLAGHER: I'll object to the</p> <p>8 form since we don't know the source of the</p> <p>9 document, but you can answer, Doctor.</p> <p>10 MR. GROSSMAN: That's fine.</p> <p>11 A. You're asking me whether I can read those</p> <p>12 words, yes, I can.</p> <p>13 Q. Do you know what the FF stands for?</p> <p>14 A. You're asking -- are you asking me to</p> <p>15 speculate?</p> <p>16 Q. No, I'm not asking you to speculate.</p> <p>17 A. I --</p> <p>18 Q. Without speculation you do not know?</p> <p>19 A. Without speculation I do not know what the</p> <p>20 abbreviation FF means on this document that</p> <p>21 I've been given.</p> <p>22 MR. GROSSMAN: Let's mark this as</p> <p>23 5.</p> <p>24 (Exhibit No. 5, Document later</p> <p>25 withdrawn, marked for identification.)</p>	<p style="text-align: right;">Page 61</p> <p>1 Commission's report --</p> <p>2 A. This document.</p> <p>3 Q. Yes.</p> <p>4 -- "Tar," Nicotine and Carbon</p> <p>5 Monoxide of the Smoke of 1294 Varieties of</p> <p>6 Domestic Cigarettes For the Year 1998,"</p> <p>7 issued in 2000. Have you ever seen this</p> <p>8 document before?</p> <p>9 A. This is the first time that I have seen this</p> <p>10 document.</p> <p>11 Q. All right. Could you turn with me after the</p> <p>12 initial pages, pages marked at the bottom</p> <p>13 through Page 11, and then following that</p> <p>14 there are pages marked at the top beginning</p> <p>15 at Page 1. Do you see that, in the upper</p> <p>16 right-hand corner?</p> <p>17 A. Okay. Page 1 marked at the top. "Page"</p> <p>18 appears to be in italics.</p> <p>19 Q. Okay.</p> <p>20 A. Okay.</p> <p>21 Q. Do you see the FTC lists "Brand Name," then</p> <p>22 "Description," "Tar," "Nicotine," "CO" in</p> <p>23 the right-hand corner?</p> <p>24 MR. GALLAGHER: I'm sorry, we're on</p> <p>25 Page 1 of the attachment?</p>

<p style="text-align: right;">Page 62</p> <p>1 MR. GROSSMAN: Yes.</p> <p>2 Q. Do you see that?</p> <p>3 A. I see "Tar," I see "Nic," which you're</p> <p>4 telling me -- I can assume is nicotine, and</p> <p>5 "CO," which I can assume is carbon dioxide.</p> <p>6 Q. Carbon monoxide.</p> <p>7 A. I'm sorry, carbon monoxide.</p> <p>8 Q. Okay. Looking down at the "All American</p> <p>9 Value," third cigarette, do you see --</p> <p>10 A. Third cigarette, yes.</p> <p>11 Q. You see it says "Description, 100"? Do you</p> <p>12 know what that refers to?</p> <p>13 A. I can speculate.</p> <p>14 Q. Well, what do you think it refers to?</p> <p>15 A. I can speculate that it's 100 -- is it</p> <p>16 millimeters or --</p> <p>17 Q. Millimeters, yes.</p> <p>18 A. -- centimeters or --</p> <p>19 Q. Millimeters --</p> <p>20 A. Centimeters would be pretty long.</p> <p>21 Millimeters.</p> <p>22 Q. 100 millimeters refers to the length. Then</p> <p>23 it says "F."</p> <p>24 A. So 10 centimeters.</p> <p>25 Q. Then it says "F"?</p>	<p style="text-align: right;">Page 64</p> <p>1 that you have stated is from the Federal</p> <p>2 Trade Commission, and for the purposes of</p> <p>3 testimony I'm willing to accept that this is</p> <p>4 from the Federal Trade Commission.</p> <p>5 Q. Okay. Thank you very much.</p> <p>6 A. I notice there is ultra LT, which I presume</p> <p>7 is light.</p> <p>8 Q. Ultra light you mean?</p> <p>9 A. What?</p> <p>10 Q. Ultra --</p> <p>11 A. LT.</p> <p>12 Q. -- LT you presume it's ultra light?</p> <p>13 A. I presume it's ultra light. I'm</p> <p>14 speculating, of course. FF which appears to</p> <p>15 be, as you have implied, and, again, it's</p> <p>16 speculation, is full-flavored, and LT, which</p> <p>17 I am presuming also to be light, and then</p> <p>18 there is some blank.</p> <p>19 So it appears that this document has</p> <p>20 provided one possible characterization for</p> <p>21 attributes, scientific physical attributes,</p> <p>22 that might be attributed to this, and that</p> <p>23 is certainly true as a tautology. If this</p> <p>24 is the Federal Trade Commission and they've</p> <p>25 provided this table, then presumably they</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yeah, it says "F."</p> <p>2 Q. Do you know what that stands for?</p> <p>3 A. No, I do not know what the F stands for.</p> <p>4 Q. And then it says "SP." Do you know what</p> <p>5 that stands for?</p> <p>6 A. I do not know what the SP stands for.</p> <p>7 Q. Okay. And then it says "FF." Do you</p> <p>8 understand what that stands for?</p> <p>9 A. I thought we were looking at the third "All</p> <p>10 American Value."</p> <p>11 Q. No, the third cigarette.</p> <p>12 A. Oh, the third cigarette, okay. Yes, I see</p> <p>13 the FF.</p> <p>14 Q. Do you know what that stands for?</p> <p>15 A. Do you want me to speculate?</p> <p>16 Q. No, I don't. Is it your understanding that</p> <p>17 the Federal Trade Commission divides</p> <p>18 cigarettes into those that are full-</p> <p>19 flavored, those that are light, those that</p> <p>20 are ultra light?</p> <p>21 MR. GALLAGHER: Objection to the</p> <p>22 form, lack of foundation.</p> <p>23 Q. Is it your understanding that the Federal</p> <p>24 Trade Commission does that?</p> <p>25 A. You have provided me with a document here</p>	<p style="text-align: right;">Page 65</p> <p>1 have provided those labels.</p> <p>2 Q. Do you know whether the FTC has a test for</p> <p>3 tar and nicotine?</p> <p>4 A. I have been informed by counsel that there</p> <p>5 is a test for tar and nicotine.</p> <p>6 Q. Prior to being informed by counsel did you</p> <p>7 know whether there was a test for tar and</p> <p>8 nicotine by the FTC?</p> <p>9 A. I did not know what tests were used for tar</p> <p>10 and nicotine in cigarettes prior to being</p> <p>11 informed by counsel.</p> <p>12 Q. Have you ever smoked?</p> <p>13 A. Not in any regular situation.</p> <p>14 Q. Have you ever conducted a study or survey of</p> <p>15 cigarette advertising as part of your work</p> <p>16 in this case or otherwise?</p> <p>17 A. I have not conducted a specific study of</p> <p>18 cigarette advertising.</p> <p>19 Q. Do you know whether cigarette advertising</p> <p>20 contains tar and nicotine numbers?</p> <p>21 A. Do you mean at the present --</p> <p>22 MR. GALLAGHER: Hold on. Are you</p> <p>23 done with your question?</p> <p>24 MR. GROSSMAN: No. I'll rephrase</p> <p>25 the question.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. I'll restate the question. Could you give 2 me the name -- and I presume that the name 3 of the person is not a scientific procedure. 4 Could you give me the name of the person or 5 persons who wrote the first draft of the 6 questionnaire that was used to form the 7 basis of your opinion in this case? 8 MR. GALLAGHER: Objection to the 9 form. 10 A. You are asking a question that implies that 11 there is, in essence, a first draft that is 12 simply modified. I -- as I've written, as 13 I've taught and as I've done in this case, 14 we talk to consumers. We understand what 15 those consumers may say. Based upon that, 16 then as a team we capture our understanding 17 of the consumers and write questions. 18 I was involved in that procedure, so I 19 was involved in the -- in what you are 20 characterizing as a first draft, and I do 21 not want to characterize it as a procedure 22 by which there is a draft, then another 23 draft, then another draft. 24 Q. Who else was involved in the procedure? 25 A. Now you've asked a question that I can</p>	<p style="text-align: right;">Page 80</p> <p>1 industry, other than in this case. 2 Q. Okay. Do they work at AMS? 3 A. Both Mr. Gaskin and Ms. Schussheim do work 4 at Applied Marketing Science. 5 Q. Were you involved in hiring them at Applied 6 Marketing Science? 7 A. I am a senior consultant to Applied 8 Marketing Science. As a result, I am 9 sometimes asked by the president to advise 10 him, but those decisions are made by the 11 professional staff at Applied Marketing 12 Science. 13 Q. Were you in any way involved in the 14 interview or hiring in any way of Mr. Gaskin 15 or Ms. Schussheim at AMS? 16 A. The pronunciation is Schussheim. 17 Q. Answer the question. 18 A. Mr. Gaskin was my student, and I certainly 19 was asked if -- I believe I was asked by the 20 president whether or not Steve Gaskin would 21 be a good employee, and at that time I 22 certainly would have given him the highest 23 of praise. He's highly qualified and very 24 experienced in the market research industry. 25 I do not recall whether or not I was</p>
<p style="text-align: right;">Page 79</p> <p>1 answer. If you had asked that question in 2 the first place, I could have answered it 3 quite simply. 4 Q. Who was involved in the procedure? 5 A. As I've indicated -- well, I don't know if 6 I've indicated in the report, but Mr. Steven 7 Gaskin and Ms. Shelly Schussheim, and I will 8 spell this for the court reporter either now 9 or later, at your -- 10 Q. Later. 11 A. Later. 12 Q. We're not going to use time for that. 13 A. Okay. They were involved in carrying out, 14 at my direction, qualitative interviews. 15 Q. To your knowledge, has either Mr. Gaskin or 16 Ms. Schussheim ever been involved in the 17 cigarette industry? 18 A. I do not know their complete backgrounds and 19 all of the clients they have worked with. 20 Q. To your knowledge, have they ever been 21 involved in the cigarette industry? 22 MR. GALLAGHER: Objection to the 23 form, lack of foundation. 24 A. I do not know whether or not they have done 25 any work for clients in the cigarette</p>	<p style="text-align: right;">Page 81</p> <p>1 involved in the hiring of Ms. Schussheim, 2 but she is also a very experienced person, 3 and I've worked with her for a number of 4 years. 5 Q. Have you ever seen the resume or 6 professional CV of either of them? 7 A. I believe I have seen various documents that 8 might be considered the equivalent of CVs or 9 resumes for Mr. Gaskin. It is certainly 10 possible that I would have reviewed various 11 qualifications of Ms. Schussheim. 12 Q. To your memory, have you ever seen any 13 reference in the CV or other background of 14 either Mr. Gaskin or Ms. Schussheim to work 15 for or about the cigarette industry? 16 A. I do not recall if I have seen any reference 17 in the documents that I've seen that would 18 be equivalent to CVs or resumes that 19 indicated the full set of clients for whom 20 they have worked. 21 Q. Okay. Now, what is a regular cigarette? 22 A. Excuse me. Could you please reask that? 23 Q. Yes. What is a regular cigarette? 24 MR. GALLAGHER: Objection to the 25 form.</p>

<p style="text-align: right;">Page 82</p> <p>1 A. What I do understand is that the consumers</p> <p>2 that we talked to have in mind a fairly</p> <p>3 clean definition of what a regular cigarette</p> <p>4 is.</p> <p>5 Q. Could you point me to any note of any</p> <p>6 discussion with any consumer in which you</p> <p>7 define the term or they use the term</p> <p>8 "regular cigarette"?</p> <p>9 MR. GALLAGHER: Objection to the</p> <p>10 form.</p> <p>11 A. You have been provided the documents that</p> <p>12 include the survey that we undertook. I did</p> <p>13 not --</p> <p>14 Q. And the pretests.</p> <p>15 A. What?</p> <p>16 Q. And the pretests.</p> <p>17 A. And the pretests. And I do not recall all</p> <p>18 the wording that we used in those surveys.</p> <p>19 Even though I reviewed them recently, you</p> <p>20 know, I don't memorize all the wording.</p> <p>21 Certainly it's the wording that the</p> <p>22 consumers understood, and I believe that we</p> <p>23 used the word "regular" in those surveys.</p> <p>24 Q. What is your understanding of what a regular</p> <p>25 cigarette is?</p>	<p style="text-align: right;">Page 84</p> <p>1 indicated in the survey, is that which the</p> <p>2 consumers understand is a regular cigarette.</p> <p>3 Q. Well, you're giving an opinion based upon a</p> <p>4 survey in which you used the term "regular</p> <p>5 cigarette." What is your understanding of</p> <p>6 that term which forms a basis of the opinion</p> <p>7 that you're giving in this case?</p> <p>8 MR. GALLAGHER: Same objection.</p> <p>9 A. There were pre -- prior pretests and</p> <p>10 qualitative interviews that were both done</p> <p>11 in which, at my direction, Mr. Gaskin and</p> <p>12 Ms. Schussheim talked to consumers, and part</p> <p>13 of those pretests asked them for their</p> <p>14 understanding when provided with the survey,</p> <p>15 and also in the qualitative research these</p> <p>16 consumers understood the meaning of regular</p> <p>17 cigarettes and they could make the</p> <p>18 distinction between a regular cigarette and</p> <p>19 a light cigarette.</p> <p>20 Q. Do you know whether the term "regular</p> <p>21 cigarette" is a term that is used in</p> <p>22 cigarette advertising?</p> <p>23 MR. GALLAGHER: Objection to the</p> <p>24 form.</p> <p>25 A. As I've indicated before, I have not done a</p>
<p style="text-align: right;">Page 83</p> <p>1 MR. GALLAGHER: Objection to the</p> <p>2 form.</p> <p>3 A. I'm providing an expert opinion here on the</p> <p>4 market research. As part of that expert</p> <p>5 opinion, as I've indicated in my writings</p> <p>6 and in my lectures, it's very important to</p> <p>7 make sure that the customers and the</p> <p>8 consumers that we're surveying understand</p> <p>9 these issues.</p> <p>10 MR. GROSSMAN: Move to strike as</p> <p>11 non-responsive.</p> <p>12 Q. Please answer the question.</p> <p>13 MR. GALLAGHER: Objection to the</p> <p>14 form, asked and answered.</p> <p>15 A. I am not here to --</p> <p>16 Q. What is your understanding of what a regular</p> <p>17 cigarette is?</p> <p>18 MR. GALLAGHER: Same objection.</p> <p>19 A. My understanding of a regular cigarette, as</p> <p>20 used in the survey, is that which the</p> <p>21 consumers understand is a regular cigarette.</p> <p>22 Q. And what is that?</p> <p>23 MR. GALLAGHER: Objection to the</p> <p>24 form.</p> <p>25 A. My understanding of a regular cigarette, as</p>	<p style="text-align: right;">Page 85</p> <p>1 systematic study of the advertising in the</p> <p>2 cigarette industry.</p> <p>3 Q. So the answer is you don't know whether the</p> <p>4 term "regular" has been used in cigarette</p> <p>5 advertising to describe a type of cigarette?</p> <p>6 A. I have not done a systematic study, and I</p> <p>7 obviously have been -- I've seen cigarette</p> <p>8 advertisements, and so you're now asking me</p> <p>9 a memory test, have I ever seen or recall</p> <p>10 having seen the "regular" -- the word</p> <p>11 "regular" in some of these cigarette</p> <p>12 advertisements?</p> <p>13 Q. Everything in this deposition I guess is a</p> <p>14 memory test, Doctor, and I'm asking you</p> <p>15 whether you recall ever having seen the term</p> <p>16 "regular" in cigarette advertising, yes or</p> <p>17 no?</p> <p>18 MR. GALLAGHER: Objection to the</p> <p>19 form. Objection to the preamble. Objection</p> <p>20 to asked and answered. And you can answer</p> <p>21 it any way you want. You don't have to</p> <p>22 confine yourself to yes or no if you can</p> <p>23 give a more complete answer.</p> <p>24 A. I -- well, I did want to say that I do not</p> <p>25 agree with the preamble, and once we got</p>

<p style="text-align: right;">Page 86</p> <p>1 past the preamble I realized I didn't</p> <p>2 disagree with it, and so if you would like</p> <p>3 to reask the question, I would be happy to</p> <p>4 try and answer it.</p> <p>5 Q. You still haven't answered my question. As</p> <p>6 we sit here today, can you recall the word</p> <p>7 "regular cigarette" -- the term "regular</p> <p>8 cigarette" being used in cigarette</p> <p>9 advertising?</p> <p>10 A. As I've indicated before, I have not done a</p> <p>11 systematic study of all the advertising that</p> <p>12 the cigarette industry has used either in</p> <p>13 the last year or in the last many years. I</p> <p>14 have certainly seen cigarette advertising.</p> <p>15 As I sit here today, I do not recall all the</p> <p>16 words that were used in cigarette</p> <p>17 advertising.</p> <p>18 Q. I'm not asking you about all the words. I'm</p> <p>19 asking you about "regular."</p> <p>20 A. You're asking me to remember whether a</p> <p>21 specific word was used.</p> <p>22 Q. Yes.</p> <p>23 A. As I've indicated today, I do not recall all</p> <p>24 of the words, and therefore I do not recall</p> <p>25 that specific word.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Okay. Do you know what that "regular" as</p> <p>2 used by the FTC refers to?</p> <p>3 MR. GALLAGHER: Objection to the</p> <p>4 form.</p> <p>5 A. "Regular" is the second column in this table</p> <p>6 on Page 1.</p> <p>7 Q. And do you know to what it refers?</p> <p>8 A. It appears to be the manner in which the FTC</p> <p>9 has decided to classify cigarettes.</p> <p>10 Q. And do you know to what it refers in the</p> <p>11 FTC's classification?</p> <p>12 MR. GALLAGHER: Objection to the</p> <p>13 form.</p> <p>14 A. It appears to be a taxonomy that the FTC has</p> <p>15 put together, as indicated in this report.</p> <p>16 As I have testified before, we, in fact, are</p> <p>17 more concerned with how the consumers</p> <p>18 perceive this and whether or not the con --</p> <p>19 the FTC taxonomy is based upon consumer</p> <p>20 perception I do not know, sitting here</p> <p>21 today.</p> <p>22 Q. Doctor, do you know what the difference</p> <p>23 between a light and an ultra light cigarette</p> <p>24 is?</p> <p>25 MR. GALLAGHER: Objection to the</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Okay.</p> <p>2 A. You're asking me whether or not I have a</p> <p>3 memory of that, and I'm saying that this is</p> <p>4 not -- I do not believe it's a memory test,</p> <p>5 nor am I providing any expert opinion with</p> <p>6 respect to advertising.</p> <p>7 Q. Okay. Do you know if the term "regular</p> <p>8 cigarette" is used by the FTC?</p> <p>9 MR. GALLAGHER: Objection to the</p> <p>10 form.</p> <p>11 A. Earlier in this deposition you provided me</p> <p>12 with Exhibit No. 6 --</p> <p>13 Q. Which you had never seen before, correct?</p> <p>14 MR. GALLAGHER: I'm sorry, please</p> <p>15 don't interject --</p> <p>16 MR. GROSSMAN: I'm sorry.</p> <p>17 MR. GALLAGHER: -- on his answer.</p> <p>18 A. Which you indicated to me and I accept as</p> <p>19 provided by the regular -- by the Federal</p> <p>20 Trade Commission. In this report on Page 1</p> <p>21 is the word, or partial word, R-E-G which we</p> <p>22 have agreed that probably means regular.</p> <p>23 Q. You're referring to Page 1 in the upper</p> <p>24 right-hand corner?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 form.</p> <p>2 A. We have now gone through this with respect</p> <p>3 to regular cigarettes. Is it your intention</p> <p>4 to go through this now with respect to all</p> <p>5 designations on Page 1?</p> <p>6 MR. GALLAGHER: Doctor, go ahead</p> <p>7 and answer.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. GALLAGHER: Answer his</p> <p>10 question. I know it has nothing to do with</p> <p>11 your expert opinion in this case, but if</p> <p>12 they're going to utilize their time in this</p> <p>13 way, go ahead and answer it if you can.</p> <p>14 THE WITNESS: Okay.</p> <p>15 A. Once again, I am confident that the</p> <p>16 consumers understood the difference from the</p> <p>17 pretests, and I'm providing expert opinion</p> <p>18 with respect to how consumers perceive the</p> <p>19 word. I am not providing my own particular</p> <p>20 image of what an ultra light or a light</p> <p>21 cigarette is.</p> <p>22 Q. Do you --</p> <p>23 MR. GROSSMAN: (To Mr. Koethe.)</p> <p>24 Yeah, that's a good point.</p> <p>25 Q. Do you know whether the FTC or the cigarette</p>

<p style="text-align: right;">Page 118</p> <p>1 AFTERNOON SESSION</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 1:21. This is the beginning of Tape 3, and</p> <p>4 we are back on the record.</p> <p>5</p> <p>6 (John R. Hauser, Sc.D., Resumed.)</p> <p>7 DIRECT EXAMINATION, Continued</p> <p>8</p> <p>9 BY MR. GROSSMAN:</p> <p>10 Q. Doctor, I hope you had a good lunch.</p> <p>11 A. Thank you.</p> <p>12 Q. I would just like to go through a series of</p> <p>13 areas of expertise that I believe you don't</p> <p>14 have, but I wanted to confirm them. First</p> <p>15 of all, have you ever read any of the</p> <p>16 Surgeon General's reports on smoking and</p> <p>17 health?</p> <p>18 A. Oh, certainly was in the popular press, so I</p> <p>19 may have read something in the newspapers.</p> <p>20 Q. You read about them?</p> <p>21 A. I may have read about them. I don't know.</p> <p>22 At the time I may have read them, but I</p> <p>23 don't recall any details.</p> <p>24 Q. How often do they come out?</p> <p>25 A. How often --</p>	<p style="text-align: right;">Page 120</p> <p>1 about these monographs?</p> <p>2 A. I recall that there were monographs that</p> <p>3 indicated the time at which it became public</p> <p>4 knowledge, or alleged public knowledge, that</p> <p>5 light cigarettes were a comparable health</p> <p>6 risk to regular cigarettes. But, again,</p> <p>7 that was told to me by you. I'm not</p> <p>8 claiming expertise on that particular</p> <p>9 question.</p> <p>10 Q. Fine. Do you claim any expertise on the --</p> <p>11 on cigarette risk assessment?</p> <p>12 MR. GALLAGHER: Objection to the</p> <p>13 form.</p> <p>14 A. Could you please define the term?</p> <p>15 Q. Yeah. Do you claim any expertise on the</p> <p>16 degree of risk inherent in various designs</p> <p>17 of cigarettes --</p> <p>18 MR. GALLAGHER: Objection to the</p> <p>19 form.</p> <p>20 Q. -- health risk?</p> <p>21 MR. GALLAGHER: Sorry. Objection</p> <p>22 to the form.</p> <p>23 A. Are you asking if I have any scientific</p> <p>24 opinions as to which particular cigarettes</p> <p>25 cause which health risks --</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. Yeah.</p> <p>2 A. -- do the Surgeon General reports come out?</p> <p>3 I'm not claiming any expertise on that.</p> <p>4 Q. Fine. Are you familiar with the document</p> <p>5 that's entitled "Monograph 13 of the Public</p> <p>6 Health Service"?</p> <p>7 A. I believe that's -- I know there's a</p> <p>8 monograph, but I can't remember the numbers</p> <p>9 that -- where some decisions were made as to</p> <p>10 whether or not -- how healthy cigarettes</p> <p>11 were, and this was -- information on that</p> <p>12 was provided to me by counsel.</p> <p>13 Q. Okay. You recall receiving a monograph from</p> <p>14 counsel on the health implications of</p> <p>15 cigarettes?</p> <p>16 A. No, I do not recall receiving a monograph</p> <p>17 from counsel on the health implications of</p> <p>18 cigarettes.</p> <p>19 Q. Do you recall having been told about it?</p> <p>20 A. I recall having been told the existence of</p> <p>21 monographs, yes.</p> <p>22 Q. Okay. Do you know whether you were told</p> <p>23 about the existence of Monograph 7?</p> <p>24 A. I do not recall the numbers.</p> <p>25 Q. Okay. Do you recall what you were told</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Uh-huh. Uh-huh.</p> <p>2 A. -- or whether cigarettes cause health risks?</p> <p>3 I do not have any scientific opinions as to</p> <p>4 whether or not cigarettes cause health</p> <p>5 risks, that I'm providing in this case.</p> <p>6 Q. And you don't have any scientific opinions</p> <p>7 as to the difference in health risks of</p> <p>8 individual brands of cigarettes; is that</p> <p>9 correct?</p> <p>10 A. I am providing in this case opinions about</p> <p>11 people's perceptions of the differences in</p> <p>12 health risk.</p> <p>13 Q. Do you have any -- do you purport to have</p> <p>14 any expertise about the actual differences</p> <p>15 in risk between various brands of</p> <p>16 cigarettes?</p> <p>17 A. I do not have any -- I'm not a -- I'm not</p> <p>18 providing any medical opinions in this case</p> <p>19 as to the differences in health risk between</p> <p>20 various brands of cigarettes.</p> <p>21 Q. Are you familiar with the term</p> <p>22 "compensation" as it's applied to low tar</p> <p>23 cigarettes?</p> <p>24 MR. GALLAGHER: Objection to the</p> <p>25 form.</p>

<p style="text-align: right;">Page 146</p> <p>1 able to determine whether there is material</p> <p>2 that Dr. Hauser has done that could be</p> <p>3 relevant to his opinions in this case or</p> <p>4 relevant to cross-examination I want to</p> <p>5 know, at a minimum, whether any studies have</p> <p>6 been done that are specific to a particular</p> <p>7 brand, and in this case it's Marlboro.</p> <p>8 MR. GALLAGHER: I understand that.</p> <p>9 I need to continue to instruct him in the</p> <p>10 same manner. I'm happy to discuss that with</p> <p>11 counsel, to confer with counsel, in the</p> <p>12 Massachusetts case to see if it is</p> <p>13 appropriate or not appropriate for that to</p> <p>14 be disclosed, but that's the best I can do.</p> <p>15 And I'm happy to work with you -- work with</p> <p>16 you on that.</p> <p>17 MR. GROSSMAN: Well, let me</p> <p>18 rephrase the question.</p> <p>19 BY MR. GROSSMAN:</p> <p>20 Q. Dr. Hauser, have you ever done any brand-</p> <p>21 specific studies regarding consumer</p> <p>22 perception of the health aspects of any</p> <p>23 particular brand of cigarettes?</p> <p>24 MR. GALLAGHER: Okay. Same</p> <p>25 instruction. If you've done so in a</p>	<p style="text-align: right;">Page 148</p> <p>1 specific brand within that.</p> <p>2 Q. Well, first of all, I don't think you've</p> <p>3 answered my question. Second, I think we</p> <p>4 need to go back over your answer in another</p> <p>5 way. Let's take it one at a time.</p> <p>6 Apart from the study that you</p> <p>7 conducted in this case, have you conducted</p> <p>8 any study regarding consumers' perceptions</p> <p>9 of the health effects of any particular</p> <p>10 brand of cigarette?</p> <p>11 A. How do I say this? I want to be very exact</p> <p>12 in that we piloted some work, and it's all</p> <p>13 been disclosed to you completely, that had a</p> <p>14 slightly different sample than the work in</p> <p>15 this case, but it was pilot work, and I'm</p> <p>16 not forming nor am I -- I have not formed</p> <p>17 any opinion based upon that.</p> <p>18 Q. Now, you said that in this survey you had</p> <p>19 asked questions or received answers that</p> <p>20 suggested consumers' understanding -- brand-</p> <p>21 specific understanding of the health risks</p> <p>22 of particular brands of cigarettes?</p> <p>23 A. Okay.</p> <p>24 MR. GALLAGHER: And, I'm sorry, by</p> <p>25 "this survey" you mean the conjoint</p>
<p style="text-align: right;">Page 147</p> <p>1 consulting fashion for any other litigation</p> <p>2 that has not yet been disclosed, you should</p> <p>3 not disclose that at this time without</p> <p>4 permission of those attorneys involved in</p> <p>5 that case.</p> <p>6 MR. ALLINDER: Just so I</p> <p>7 understand, is that an instruction not to</p> <p>8 answer, Paul?</p> <p>9 MR. GALLAGHER: I think it's better</p> <p>10 if Mr. Grossman and I have a single dialogue</p> <p>11 while he's asking the questions.</p> <p>12 MR. GROSSMAN: Well, I'm waiting</p> <p>13 for the answer, and then I'll see how I</p> <p>14 address it.</p> <p>15 A. What's the question on the table?</p> <p>16 Q. Have you conducted any brand-specific</p> <p>17 studies regarding consumers' perceptions of</p> <p>18 the health effects of any specific brand of</p> <p>19 cigarette?</p> <p>20 MR. GALLAGHER: Same instruction.</p> <p>21 A. Certainly in the study that I've done for</p> <p>22 this case, we asked people's brand, and we</p> <p>23 found no significant differences among</p> <p>24 brand, so having conducted it for many</p> <p>25 brands, I guess one could say that that's a</p>	<p style="text-align: right;">Page 149</p> <p>1 analysis?</p> <p>2 MR. GROSSMAN: By the -- the survey</p> <p>3 used for the conjoint analysis.</p> <p>4 MR. GALLAGHER: Okay.</p> <p>5 Q. Doctor, let me go inside that answer. First</p> <p>6 of all, in your questionnaire you asked</p> <p>7 people for their brand of cigarettes; is</p> <p>8 that correct?</p> <p>9 A. Yes, people reported their brand of</p> <p>10 cigarettes.</p> <p>11 Q. But you did not ask people for their</p> <p>12 perceptions of their brand of cigarettes</p> <p>13 compared to other brands; is that right?</p> <p>14 MR. GALLAGHER: Objection to the</p> <p>15 form.</p> <p>16 A. The survey asked people their perceptions of</p> <p>17 their brand of cigarettes. There are</p> <p>18 instances where if, for example, their brand</p> <p>19 did not have an ultra light, we gave other</p> <p>20 examples of brands they consider as</p> <p>21 reference.</p> <p>22 Q. You did not ask smokers of, say, Marlboro</p> <p>23 Lights to compare the health effects of</p> <p>24 Marlboro Lights to Camel Lights or Winston</p> <p>25 Lights; is that correct?</p>

<p style="text-align: right;">Page 150</p> <p>1 A. I stand by the answer I've just given, and I 2 do want to -- there are issues where the 3 cigarette that they're light smoking may not 4 have an ultra light version, for example, 5 thus they refer to other reference. 6 Q. My question -- 7 A. Let me continue. 8 Q. Yeah. 9 A. Beyond that, they were not asked to do a 10 perceptual mapping of their preferences -- 11 sorry, their perceptions of all of the 12 brands of cigarettes. 13 Q. The questions dealt with lights, so-called 14 regulars and ultra light cigarettes 15 generically; there was no question apart 16 from the question asking people what brand 17 they smoked that referred to differences 18 between brands of cigarettes but only of 19 types of cigarettes; is that correct? 20 You're shaking your head. I'll rephrase the 21 question. 22 A. I don't fully understand your question -- 23 Q. I'll rephrase -- 24 A. You mixed things -- 25 Q. I'll rephrase --</p>	<p style="text-align: right;">Page 152</p> <p>1 that was mentioned yesterday, which I 2 confirmed today, the Daubert hearings will 3 take place around August 10th." 4 Are you familiar with Daubert 5 hearings? 6 A. I know what a Daubert hearing is. 7 Q. Have you ever participated in one before? 8 A. Yes. 9 Q. How many cases? 10 A. Well, there was only one time where I 11 actually had to testify in a Daubert 12 hearing. 13 Q. Uh-huh. When was that? 14 A. This was in federal court in Florida. 15 Q. And when was that? 16 A. It's on my vitae. I can look it up. Do you 17 want me to look it up? 18 Q. Who was the client? 19 A. The client was the Attorney General -- 20 Attorneys General of a number of different 21 states. I suspect it was about 30 different 22 states, but the exact number I don't recall. 23 Q. In what kind of case? 24 A. This was a price-fixing case. 25 Q. Okay. So pursuant to this e-mail you</p>
<p style="text-align: right;">Page 151</p> <p>1 A. -- up there. 2 Q. I'll rephrase -- 3 A. Okay. 4 Q. -- the question. 5 Could you point me to any question on 6 your questionnaire that asks respondents to 7 compare the health effects of any two brands 8 or any aggregation of brands of cigarettes 9 apart from comparisons between regular, 10 light and ultra light cigarettes, as you 11 define them? 12 MR. GALLAGHER: Objection to the 13 form. 14 A. Within the survey consumers were asked to 15 compare within brand health risk, within 16 brand taste, soft versus hard pack and 17 price, so four attributes. You've just 18 stated one. They were then not -- they were 19 not specifically asked nor was it a part of 20 the design of the survey for one consumer to 21 give their own perceptions of many different 22 brands of cigarettes. 23 Q. Okay. Now, looking again at the page that 24 you have in front of you, which is Hauser 25 005, on the bottom it says, "Another fact</p>	<p style="text-align: right;">Page 153</p> <p>1 understood that you might be called upon to 2 testify at Daubert hearings around August 3 10th, correct? 4 A. That's what the e-mail says, yes. 5 Q. And it's your understanding, is it not, that 6 you do not participate in the Daubert 7 hearing until after you have filed an expert 8 report? 9 A. That's -- I'm not a lawyer, so I don't know 10 the rules of when you do or don't appear in 11 a Daubert hearing. 12 Q. How long did you estimate for plaintiffs' 13 counsel it would take to conduct the study 14 that you would undertake in this case? 15 MR. GALLAGHER: Objection to the 16 form. 17 A. I did not provide a specific estimate of the 18 time it would take. 19 Q. Did AMS provide a specific estimate, to your 20 knowledge? 21 A. I do not know that. 22 Q. Did you provide an approximate estimate on 23 the time it would take to conduct the study? 24 A. I did not provide an approximate estimate. 25 It was my goal to do the study correctly and</p>

<p style="text-align: right;">Page 162</p> <p>1 A. Well, as you're no doubt familiar, there are 2 a lot of potential biases -- 3 Q. Yeah. Could you -- 4 A. -- in surveys. 5 Q. -- enumerate those? 6 A. And one of the roles of the survey expert is 7 to minimize these biases, and in addition to 8 trying to minimize those biases, to do 9 various things such as randomization to 10 eliminate any biases that might happen, and 11 then finally to look at various statistics 12 that could determine whether or not these 13 biases did happen. 14 Now, if you were asking me to 15 enumerate all the potential biases, there 16 are excellent textbooks on the subject. 17 Q. Enumerate those, if you can recall. 18 A. Oh, well, there could be telescoping, both 19 reverse and forward telescoping. You know, 20 there certainly could be other sample 21 biases, and we did our best to prevent 22 those. There certainly could be order 23 effect biases, and we randomized to avoid 24 those. You know, again, just every aspect 25 of the survey we have to look at as</p>	<p style="text-align: right;">Page 164</p> <p>1 think a while what I put into my notes, but 2 basically -- let me state it in a positive 3 way: that the survey experts should do 4 their best to make sure the questions are 5 understood, that there's no order effects, 6 that there's no response biases, and that 7 they are analyzed correctly. 8 Q. Okay. 9 A. And that's the best -- you know, if that's 10 done right, then you're going to minimize 11 the biases. 12 Q. What is order effect bias? 13 A. Okay. An order effect bias would be if -- 14 oh, you know, suppose I ask you a very 15 leading question, as you're very familiar 16 with this, and by asking you that leading 17 question I get you thinking in one way and 18 then I ask the same question again. That 19 might -- the first question might bias the 20 second question. 21 Q. That's an example of an order effect bias? 22 A. That's what you asked for, yes. 23 Q. Yes. I actually asked a definition. An 24 order effect bias is a bias that's injected 25 into a survey when the order of the</p>
<p style="text-align: right;">Page 163</p> <p>1 carefully as possible, and we've done our 2 best to minimize any potential biases. And 3 furthermore, we have statistics that 4 indicate that they are not there. 5 Q. Are there any other kinds of biases that you 6 can recall, as we sit here? 7 A. You know, if the word -- if the questions 8 are -- if the -- if a pretest is not done 9 and the survey expert doesn't know that the 10 questions are understandable to response 11 (sic), there may be random order, random 12 effects. 13 I think it's also worth noting that 14 there's a difference between bias, which is 15 a change in the expected value of the 16 answer, which is a systematic direction, and 17 potential randomness that is added. So a 18 lot of these -- a lot of effects such as 19 question ordering, sample things can add 20 noise and not necessarily a bias. 21 Another type of bias might be 22 endogeneity bias. 23 Q. Anything else? 24 A. You know, you're asking me to list, you 25 know, on the spot. I have to sit down and</p>	<p style="text-align: right;">Page 165</p> <p>1 questions leads the respondent to assume the 2 answer that the questioner apparently wants; 3 is that correct? 4 MR. GALLAGHER: Objection to the 5 form. 6 A. Not quite. 7 Q. Okay. How is it not correct? 8 A. What you're defining is demand artifact. 9 Q. Uh-huh. What is demand artifact? 10 A. Demand artifact is when the types of 11 questions, not necessarily the order, 12 although could be the order, causes the 13 respondent to guess or infer which answer is 14 desired by the surveyor. 15 Q. And that's a type of bias; is that correct? 16 A. That's a type of bias. And we were very 17 careful to avoid demand artifactS. 18 Q. And how is order effect different, order 19 effect bias different? 20 A. An order effect, it -- the order of the 21 questions may actually influence the 22 respondents' answers, and that's why we 23 randomize certain portions of the 24 questions -- certain portions of the survey, 25 I'm sorry, not the questions.</p>

<p style="text-align: right;">Page 170</p> <p>1 sure that there is as little bias as is</p> <p>2 feasible and that any errors in the survey</p> <p>3 are in fact zero mean.</p> <p>4 Q. And to avoid sample bias you want to make</p> <p>5 sure that the population being surveyed is</p> <p>6 as representative as possible of the target</p> <p>7 population, correct?</p> <p>8 MR. GALLAGHER: Objection to the</p> <p>9 form.</p> <p>10 A. Not entirely correct.</p> <p>11 Q. How is it not correct?</p> <p>12 A. What I want to make sure is that if there's</p> <p>13 any non-representativeness, that that</p> <p>14 non-representativeness is not correlated</p> <p>15 with the model that I'm -- being developed.</p> <p>16 And you could have a non-random sample, but</p> <p>17 as long as the non-randomness or the</p> <p>18 non-representativeness is not correlated</p> <p>19 with the variables you're trying to analyze,</p> <p>20 it will provide no bias.</p> <p>21 And that goes back to sort of the</p> <p>22 second term in the mathematical equation I</p> <p>23 just gave you. It's a slightly different</p> <p>24 way of forming the question. It's not</p> <p>25 endogeneity-based, but it goes back to that.</p>	<p style="text-align: right;">Page 172</p> <p>1 A. If Ms. Schussheim had made notes, those</p> <p>2 would have been provided to you.</p> <p>3 Q. Were any transcripts made of those</p> <p>4 interviews?</p> <p>5 A. I do not believe that there were any</p> <p>6 transcripts of those interviews.</p> <p>7 Q. Were any of the interviews recorded?</p> <p>8 A. I do not know if there were any recordings</p> <p>9 of those interviews.</p> <p>10 Q. Now, how were the 14 interviews --</p> <p>11 interviewees selected for those interviews?</p> <p>12 A. As is appropriate, they were selected as a</p> <p>13 somewhat representative but not fully</p> <p>14 representative. For example, they were all</p> <p>15 within the Boston area. We're most</p> <p>16 interested in the general understanding</p> <p>17 within the qualitative interviews. Now, we</p> <p>18 wanted a distinguished qualitative pretest,</p> <p>19 but the qualitative interviews were chosen</p> <p>20 to understand the wording.</p> <p>21 MR. GALLAGHER: Ted, when you have</p> <p>22 a chance, can we take a break?</p> <p>23 MR. GROSSMAN: Yeah, in a couple</p> <p>24 minutes we'll reach a break point.</p> <p>25 Q. In the qualitative -- all of the people for</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Now, in this case you, you and AMS conducted</p> <p>2 pretests, three rounds of pretests before</p> <p>3 the questionnaire was administered on the</p> <p>4 Web; is that right?</p> <p>5 A. Well, there are two types of -- there were</p> <p>6 qualitative interviews, and there were</p> <p>7 pretests. And so, you know, done over</p> <p>8 multiple -- the multiple parts of all of</p> <p>9 those.</p> <p>10 Q. And there were seven people in the first</p> <p>11 qualitative -- in the first round of</p> <p>12 qualitative interviews; is that correct?</p> <p>13 A. Well, not quite.</p> <p>14 Q. How many were there?</p> <p>15 A. I believe there were 14.</p> <p>16 Q. We have reports of seven. Were reports</p> <p>17 generated for every one of the people who</p> <p>18 was in the qualitative interviews?</p> <p>19 A. No, I believe that -- I think Mr. Gaskin did</p> <p>20 seven, and Ms. Schussheim did, and Mr.</p> <p>21 Gaskin took detailed notes. Ms. Schussheim</p> <p>22 gave me verbal briefings on the interviews</p> <p>23 that she had done.</p> <p>24 Q. Were any notes of any kind made of Ms.</p> <p>25 Schussheim's interviews?</p>	<p style="text-align: right;">Page 173</p> <p>1 the qualitative interviews were from the</p> <p>2 Boston area, and all of them smoked light</p> <p>3 cigarettes; is that correct?</p> <p>4 A. I believe they were all light cigarettes.</p> <p>5 You know, I would have to go back and check</p> <p>6 that.</p> <p>7 Q. Do you have any record of or any knowledge</p> <p>8 of the ethnic breakdown of the people who</p> <p>9 were interviewed in the qualitative</p> <p>10 interviews?</p> <p>11 A. I do not recall whether that data was</p> <p>12 collected -- those data were collected.</p> <p>13 Q. Do you recall whether there were any efforts</p> <p>14 to -- for the qualitative interviews to</p> <p>15 include people who were African American,</p> <p>16 people who were Hispanic, people who met</p> <p>17 other demographic criteria of that kind?</p> <p>18 A. These are -- were basically going for</p> <p>19 qualitative interviews, which means we want</p> <p>20 to make sure that people understand the</p> <p>21 surveys, and I've written fairly extensively</p> <p>22 on this. You do not need to do the same</p> <p>23 level of projectability, of sampling, and</p> <p>24 this has been the literature, oh, certainly</p> <p>25 back through the '60s that that's not</p>

<p style="text-align: right;">Page 174</p> <p>1 necessary.</p> <p>2 So we followed scientific standards</p> <p>3 there. So as a result, I do not know of all</p> <p>4 the demographic breakdowns of the 14 people</p> <p>5 in the qualitative interviews.</p> <p>6 Q. Okay. So you don't know if any were black;</p> <p>7 is that correct?</p> <p>8 A. I did not -- I do not recall collecting all</p> <p>9 the demographic information for people in</p> <p>10 the -- for the 14 people in the qualitative</p> <p>11 interviews nor did I feel that was</p> <p>12 necessary.</p> <p>13 Q. In answer to the question, then, you do not</p> <p>14 know whether any of the 14 people who were</p> <p>15 interviewed was black; is that correct?</p> <p>16 A. Sitting here today, it might be possible to</p> <p>17 find out whether or not that's the case, but</p> <p>18 I do not recall whether any of those were</p> <p>19 African American.</p> <p>20 Q. Do you recall whether any of the people</p> <p>21 interviewed was Hispanic?</p> <p>22 A. As I've indicated, I did not record or did</p> <p>23 not ask to be recorded the demographic</p> <p>24 match -- makeup of these people. I did ask</p> <p>25 that they be representative, and you can go</p>	<p style="text-align: right;">Page 176</p> <p>1 any knowledge whatsoever whether any of the</p> <p>2 respondents for the qualitative research was</p> <p>3 Hispanic?</p> <p>4 MR. GALLAGHER: Objection, asked</p> <p>5 and answered.</p> <p>6 A. Well, I'll give the answer that I've given</p> <p>7 before, which is following appropriate</p> <p>8 methodology --</p> <p>9 Q. If you're going to give the same answer,</p> <p>10 then there's no need to waste time.</p> <p>11 A. Well, let the record reflect that I was not</p> <p>12 able to finish my answer.</p> <p>13 Q. I'll let the record reflect that we're in</p> <p>14 the midst of a filibuster that's going to</p> <p>15 take a long time, and all of this is going</p> <p>16 to be before the judge. We're in the midst</p> <p>17 of writing a motion now.</p> <p>18 MR. GALLAGHER: Come on, Ted. Come</p> <p>19 on, Ted. Just ask questions, please.</p> <p>20 Q. Yes or no, do you know whether --</p> <p>21 MR. GALLAGHER: Please don't berate</p> <p>22 the witness.</p> <p>23 MR. GROSSMAN: I am asking a</p> <p>24 question.</p> <p>25 Q. Yes or no, do you know whether any of the 14</p>
<p style="text-align: right;">Page 175</p> <p>1 through question after question and my</p> <p>2 answer's going to be the same, I did not</p> <p>3 record --</p> <p>4 Q. Well, I need a record of this. So the</p> <p>5 answer is you do not know whether any of the</p> <p>6 14 people were Hispanic; is that correct?</p> <p>7 A. As I've indicated, Mr. Gaskin and Ms.</p> <p>8 Schussheim collected a representative sample</p> <p>9 that is appropriate for qualitative</p> <p>10 research, and as a result I did not ask them</p> <p>11 to record the demographic information;</p> <p>12 therefore, on Hispanic or black -- or</p> <p>13 African American or other ethnic diversity</p> <p>14 I'm not able, sitting here today, to answer</p> <p>15 you as to what the makeup of that sample</p> <p>16 was.</p> <p>17 Q. And to the best of your knowledge, you don't</p> <p>18 know if anyone in the sample was Hispanic;</p> <p>19 is that correct?</p> <p>20 A. I believe I've answered that question two or</p> <p>21 three times.</p> <p>22 Q. No, you haven't.</p> <p>23 MR. GALLAGHER: Yeah, he has.</p> <p>24 Q. It's a simple question. It just asks for a</p> <p>25 simple answer. Do you know -- do you have</p>	<p style="text-align: right;">Page 177</p> <p>1 people interviewed was Hispanic?</p> <p>2 MR. GALLAGHER: You just asked the</p> <p>3 question. He started to give an answer, and</p> <p>4 you told him you didn't want to hear it, so</p> <p>5 do you want an answer or not?</p> <p>6 MR. GROSSMAN: I want an answer.</p> <p>7 MR. GALLAGHER: Okay.</p> <p>8 Q. Yes or no, do you know whether any of the 14</p> <p>9 people was Hispanic?</p> <p>10 MR. GALLAGHER: Objection, asked</p> <p>11 and answered. Go ahead, Dr. Hauser.</p> <p>12 A. My understanding -- if I am to answer your</p> <p>13 question, you cannot dictate the form of the</p> <p>14 answer. And I want to indicate, once again,</p> <p>15 that I did not collect any information -- or</p> <p>16 did not record any information as to the</p> <p>17 ethnic background; therefore, I do not know</p> <p>18 whether or not -- I do not know, sitting</p> <p>19 here today, whether or not anybody was</p> <p>20 Hispanic or not Hispanic.</p> <p>21 Q. Do you know what the income levels of the 14</p> <p>22 people were?</p> <p>23 A. Once again, I did not record the demographic</p> <p>24 makeup of the 14 people in the qualitative</p> <p>25 interviews, as is appropriate scientific</p>

<p style="text-align: right;">Page 178</p> <p>1 knowledge; therefore, sitting here today, I 2 do not necessarily know what the income of 3 these people were. 4 Q. Were they asked their income? 5 A. To the best of my recollection, I do not 6 recall whether or not they were asked their 7 income. 8 Q. Do you have any information about the level 9 of education of the 14 people who were -- 10 A. As I've indicated before, we did a 11 qualitative pretest -- qualitative 12 interviews with 14 people to understand the 13 wording. Following appropriate scientific 14 methodology, I did not record the 15 demographic makeup of these respondents; 16 therefore, I do not know specifically what 17 their income was. 18 Q. I'm asking you what their -- 19 A. Or education. I do not know specifically 20 what their education is. 21 Q. As we sit here today, you cannot say that 22 the 14 people interviewed were 23 representative of smokers of light 24 cigarettes as a group with regard to 25 education; is that right?</p>	<p style="text-align: right;">Page 180</p> <p>1 it's a good way to determine -- 2 MR. GALLAGHER: Okay. Ask your 3 question, please. 4 Q. What I want to know is, is there any way 5 that you can tell whether the education 6 level of the 14 people who were interviewed 7 is the same on average as the education 8 level of light smokers generally? 9 A. As I've indicated before, I have not 10 collected demographic information on the 14 11 qualitative informations, nor did I need a 12 feeling -- did I have a feeling to do it. 13 Therefore, I did not have the income or the 14 education information on the 14 people. 15 Therefore, I would not be able to do, say, a 16 chi squared test versus the entire 17 population. 18 MR. GROSSMAN: You wanted a break, 19 we can take a break now. 20 MR. GALLAGHER: Great. Thank you. 21 THE VIDEOGRAPHER: The time is 22 2:36. There is the end of Tape 3, and we 23 are off the record. 24 (Recess taken.) 25 THE VIDEOGRAPHER: The time is</p>
<p style="text-align: right;">Page 179</p> <p>1 MR. GALLAGHER: Objection to the 2 form, lack of foundation. 3 A. Actually, here I would rely -- you've 4 actually asked me to, I believe, when we 5 looked at Exhibit 3, you actually indicated 6 "The Voice of the Customer," which is an 7 award winning paper. I think it was the -- 8 it's won a number of awards. It's been 9 cited, I don't know if it's 100 or 200 times 10 scientifically, and in that paper there is a 11 very I think fairly well-known beta binomial 12 model which establishes to a high scientific 13 degree that this number of people are more 14 than sufficient to determine the wording. 15 Therefore, it is, in fact, representative of 16 what -- the wording that we might effect. 17 And I've got scientific basis to back that 18 up. 19 Q. I didn't ask you that question. 20 A. Yes, you did. 21 Q. No, I didn't. I asked you whether the 22 education level of the 14 people involved 23 was representative of the education level of 24 light smokers generally, not whether you are 25 willing to rely upon this and not whether</p>	<p style="text-align: right;">Page 181</p> <p>1 2:48. This is the beginning of Tape 4, and 2 we're back on the record. 3 BY MR. GROSSMAN: 4 Q. Thank you. Dr. Hauser, let me direct you, 5 if I may, to Exhibit 3 once again, which is 6 excerpts from the website of AMS, and if I 7 may, I'd like to direct you to the page -- 8 to the -- what's called Page 3 of 3 here on 9 "FAQ on Legal Surveys." 10 A. Okay. The word "broad" appears in the upper 11 left corner? 12 Q. The word -- excuse me? 13 A. "Broad"? 14 MR. GALLAGHER: Yes. 15 Q. Yes. 16 A. Okay. 17 Q. Do you see where it says, "What are the main 18 things to consider when choosing a survey 19 research expert"? 20 A. Yes. 21 Q. It says, "When hiring a new survey expert, 22 the most important criteria to consider (in 23 no particular order) are testifying skill, 24 credentials, expertise, and availability. 25 Look for a survey expert who can provide an</p>

<p style="text-align: right;">Page 182</p> <p>1 admissible opinion under the Daubert-Joiner-</p> <p>2 Kumho gate-keeping tests and also remain</p> <p>3 cool when testifying under oath despite</p> <p>4 intensive questioning."</p> <p>5 Do you know who drafted that?</p> <p>6 A. No, I don't.</p> <p>7 Q. Did you participate in drafting that?</p> <p>8 A. No, I didn't.</p> <p>9 Q. Do you know what the Daubert-Joiner-Kumho</p> <p>10 gate-keeping tests are?</p> <p>11 MR. GALLAGHER: Objection to the</p> <p>12 form, calls for a legal conclusion, but go</p> <p>13 ahead.</p> <p>14 THE WITNESS: Okay.</p> <p>15 A. As I've testified before, I've been</p> <p>16 through what I was told was the Daubert</p> <p>17 hearing, but I'm not a lawyer, so I didn't</p> <p>18 realize that there's actually two other</p> <p>19 words that go with it.</p> <p>20 Q. Okay. Could you look at the next page of</p> <p>21 this, entitled "Checklist For Choosing a</p> <p>22 Survey Research Expert."</p> <p>23 A. Yes.</p> <p>24 Q. Did you help draft this checklist?</p> <p>25 A. No, I did not.</p>	<p style="text-align: right;">Page 184</p> <p>1 correct?</p> <p>2 A. I do not recall doing any other survey</p> <p>3 research in the cigarette industry apart</p> <p>4 from what's been done in this case or</p> <p>5 related issues.</p> <p>6 Q. Either before your work in this case or</p> <p>7 during the work in this case, did you study</p> <p>8 the demographics of smokers of light</p> <p>9 cigarettes?</p> <p>10 A. Well, what we have is we have a set of 72</p> <p>11 demographic categories, and then within that</p> <p>12 we have people who are light cigarettes</p> <p>13 (sic), so we have some indication of what</p> <p>14 the demographic mix might be, but I have not</p> <p>15 made any specific study of the demographic</p> <p>16 makeup of the light cigarette population.</p> <p>17 Q. Okay. Just for clarification, you have --</p> <p>18 you have categories that you asked the</p> <p>19 people who answered questionnaires, correct?</p> <p>20 MR. GALLAGHER: Objection, asked</p> <p>21 and answered.</p> <p>22 A. Well, not correct. That's not exactly -</p> <p>23 Q. Okay. Well, let me --</p> <p>24 A. That's not actually --</p> <p>25 Q. Let me rephrase the question.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Have you seen it before?</p> <p>2 A. No, actually, I haven't.</p> <p>3 Q. You have not?</p> <p>4 A. No, I haven't.</p> <p>5 Q. Okay. I would like to direct your</p> <p>6 attention, if I may, 60 percent down the</p> <p>7 page under the area of "Expertise."</p> <p>8 A. "Expertise."</p> <p>9 Q. It says, "Has" -- third down, "Has survey</p> <p>10 research experience in the specific</p> <p>11 industry."</p> <p>12 Do you see that?</p> <p>13 A. The word -- I see the phrase that says, "Has</p> <p>14 survey research experience in the specific</p> <p>15 industry, research modality or" --</p> <p>16 Q. "Population"?</p> <p>17 A. Oh, "population," okay. It's cut off.</p> <p>18 Q. Okay.</p> <p>19 A. So I presume that's the logical or.</p> <p>20 Q. Doctor, it's correct, is it not, that you do</p> <p>21 not have -- I'll rephrase the question to</p> <p>22 see if it -- to make you happier.</p> <p>23 You have no research survey</p> <p>24 experience, apart from what you've done in</p> <p>25 this case, in the cigarette industry,</p>	<p style="text-align: right;">Page 185</p> <p>1 You say you asked certain demographic</p> <p>2 characteristics in the questionnaires that</p> <p>3 were provided for this survey, correct?</p> <p>4 A. We asked demographic questionnaires in</p> <p>5 the -- demographic questions in the study.</p> <p>6 Q. But since you have made no study of the</p> <p>7 demographics of light smokers in the general</p> <p>8 population, you have no way to compare the</p> <p>9 demographics of those who were surveyed with</p> <p>10 the demographics of light smokers in the</p> <p>11 general population as a whole; is that</p> <p>12 correct?</p> <p>13 MR. GALLAGHER: Objection to the</p> <p>14 form, lack of foundation.</p> <p>15 A. No, that's not correct.</p> <p>16 Q. Well, what percentage of light smokers in</p> <p>17 the United States have family incomes under</p> <p>18 \$50,000?</p> <p>19 A. I don't recall the answer to that question,</p> <p>20 sitting here today.</p> <p>21 Q. How does the demographic makeup of the</p> <p>22 respondents to your questionnaire compare to</p> <p>23 the demographic makeup of light smokers</p> <p>24 generally with regard to the number of</p> <p>25 people who have family incomes under</p>

<p style="text-align: right;">Page 218</p> <p>1 A. Well, we said that if people do that, then 2 lexicographic might be a way of describing 3 it. We did not say that any study had been 4 done to demonstrate that people are 5 lexicographic with respect to SUVs. 6 Q. So your survey among -- how many people were 7 surveyed? 8 A. Oh, I seem to recall it was 627, but we can 9 look up the -- well, 627 responses. 10 Q. All right. Among the 627 respondents to 11 your survey, there was not a single person 12 who appeared to decide first that he would 13 choose only the cigarettes with the least 14 risk and then decide among those cigarettes 15 that had the least risk; is that correct? 16 MR. GALLAGHER: Objection to the 17 form. 18 A. That's not quite right. 19 Q. For the four aspects that you considered 20 there was no one who made a determinative 21 choice that he would only consider those 22 cigarettes that had the lowest health risk; 23 is that correct? 24 A. What the survey says is that there are other 25 aspects such as price, such as taste, such</p>	<p style="text-align: right;">Page 220</p> <p>1 lower price or hard pack versus soft pack or 2 taste; is that correct? 3 A. Right. These people considered health risks 4 extremely important, but it actually was a 5 compensatory attribute. 6 Q. Now, surveys are designed with specific 7 goals. This survey was designed with a 8 specific goal; is that correct? 9 A. A survey is designed to answer specific 10 questions. 11 Q. What was the specific question that you 12 sought to answer here? 13 A. Well, the specific question that I was asked 14 to look into was how people value health 15 risks. 16 Q. And the questions in the survey method have 17 to be appropriate to that study goal; is 18 that correct? 19 MR. GALLAGHER: Objection to the 20 form. 21 A. Well, certainly the questions in the survey, 22 the -- well, questions in the survey are 23 designed to answer that question. Now, not 24 every question in a survey needs to answer 25 any specific question, and sometimes some</p>
<p style="text-align: right;">Page 219</p> <p>1 as pack type which can compensate for lower 2 health risk, and, in fact, there might -- 3 people might be willing to accept higher 4 health risk for a much, much lower price. 5 And -- 6 Q. It wasn't a -- 7 MR. GALLAGHER: Hold on. Hold on. 8 MR. GROSSMAN: I'm sorry. 9 MR. GALLAGHER: Please finish, Dr. 10 Hauser. 11 A. You know, and that's what the survey says. 12 Now, a few times you haven't been 13 technically accurate in describing a 14 lexicographic process, and just for the 15 record, a lexicographic process is one in 16 which there are no other aspects that can 17 compensate for the initial choice on that 18 first aspect or on the second or whatever 19 going down the list, so it's a little bit 20 different than you defined technically, and 21 I would like to stay with the technical 22 definition. 23 Q. There wasn't a single person of the 620 24 (sic) respondents who were surveyed who 25 would not trade health benefits for either</p>	<p style="text-align: right;">Page 221</p> <p>1 questions will be included in a survey to 2 avoid demand artifacts, and there's reasons 3 why all the questions are in the survey. 4 But certainly looking at the overall goal of 5 trying to answer a particular set of 6 questions is part of the role of designing a 7 survey. 8 Q. Doctor, let me confirm that your survey was 9 not designed for certain things, okay? 10 First, your survey was not designed to 11 determine what any respondent's second brand 12 choice would be if their choice were not -- 13 if their cigarette of choice were not 14 available; is that correct? 15 A. My survey was not designed to do an 16 interbrand comparison. 17 Q. It was not designed to determine cross- 18 elasticity of demand among brands; is that 19 correct? 20 A. My survey was not designed to determine 21 interbrand cross-elasticity; however, my 22 survey can be used for cross-elasticity 23 among attributes. 24 Q. For example, do you know whether a Marlboro 25 Lights smoker in the absence of his Marlboro</p>

<p style="text-align: right;">Page 222</p> <p>1 Lights is more likely to choose another 2 Marlboro product or another lights product? 3 A. I am not providing an expert opinion with 4 respect to that. I have not done a survey 5 with respect to that particular question. I 6 focused on light cigarettes, and I focused 7 on the brand of cigarette that they were 8 smoking and asked questions about the 9 attributes of those light cigarettes. 10 Q. Your survey was not intended to determine 11 what the respondents had read about the 12 potential dangers of light cigarettes in 13 relationship to other cigarettes; is that 14 correct? 15 A. We're talking about the conjoint analysis 16 survey? 17 Q. Yes. 18 A. The conjoint analysis survey was not 19 designed to determine what consumers had 20 read about cigarettes, light cigarettes or 21 other cigarettes; however, certainly any 22 knowledge that they would have gained from 23 reading that would have gone into the 24 answers that they provided with respect to 25 the survey.</p>	<p style="text-align: right;">Page 224</p> <p>1 risks and other aspects of questions they 2 can answer. However, my survey did not 3 specifically ask what information they -- 4 the conjoint survey did not ask what 5 information they obtained, whether it be in 6 the form of articles or other sources of 7 information. 8 Q. Okay. You don't know the extent to which 9 the survey respondents believed or didn't 10 believe what they heard from cigarette 11 companies; is that correct? 12 A. We're speaking about the conjoint survey? 13 Q. We're speaking about the survey as a whole. 14 You did not ask respondents the degree to 15 which they relied upon statements of the 16 cigarette companies or the Surgeon General 17 or other public health authorities or 18 newspapers or magazines or television or 19 anything else; is that correct? 20 A. The conjoint survey did not ask 21 respondents -- let me see if I can remember 22 this list that you've given me. They did 23 not ask respondents whether they relied upon 24 information from the Surgeon General. The 25 conjoint survey did not ask explicitly how</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. It didn't measure how many people had read 2 articles that equated the risks of light 3 cigarettes with the risks of full-flavored 4 filter cigarettes; is that correct? 5 MR. GALLAGHER: Objection to the 6 form. 7 A. My survey did not ask respondents how many 8 articles they had read. 9 Q. And it didn't measure that? 10 A. My survey may have measured that indirectly, 11 and certainly the amount of articles they 12 read could have influenced their own 13 perceptions of health risks. And to the 14 extent that that did, there's some indirect 15 evidence. However, I'm quite happy to say 16 that the survey did not ask specific 17 questions as to how many articles consumers 18 had read. 19 Q. In fact, your survey did not ask any 20 questions that regarded any source of 21 information for the respondents; is that 22 correct? 23 A. My sur -- the information that respondents 24 had obtained, had read or had otherwise 25 gotten would affect their answers to health</p>	<p style="text-align: right;">Page 225</p> <p>1 many articles people had read. And then you 2 had a whole list of other things. 3 Q. Sir, that -- 4 A. By and large, you know, I think it's fair to 5 say that the conjoint analysis survey was 6 asking people's preferences with respect to 7 these -- the characteristics that we 8 measured, as well as other questions, in 9 particular trade-offs among health risk and 10 other things such as monetary value. The 11 survey was not designed to determine where 12 they obtained information about health 13 risks. 14 Q. The survey was not designed to measure the 15 respondents' understanding of the word 16 "light" as opposed to some other descriptor; 17 isn't that correct? 18 A. The word "light" is used in the survey, and 19 I'm quite happy that -- with the pretest and 20 the qualitative interviews that respondents 21 understood the light with -- the word 22 "light" within the context of the survey. 23 However, the survey was not designed to 24 totally determine everything that "light" 25 might imply in every product category.</p>

<p style="text-align: right;">Page 226</p> <p>1 Q. It was not designed to determine whether the 2 respondents would have purchased the same 3 cigarettes that they in fact smoked if those 4 cigarettes did not have the word "light" on 5 them; is that correct? 6 MR. GALLAGHER: Objection to the 7 form. 8 A. You know, that's kind of a little bit of a 9 vague question. You know, certainly the 10 survey asked people as to whether or not 11 certainly their preferences with respect to 12 the health risks and the taste and also 13 monetary value and pack size -- pack type 14 with respect to light cigarettes. However, 15 we're focusing on people who have already 16 decided to choose light cigarettes. 17 So I did not do any analysis of why 18 those people chose light to determine 19 whether or not it had "light" on the pack or 20 whether they had some other -- some other 21 reason for buying it. However, once they 22 did choose light, I now know that they're 23 willing to basically trade -- they value 24 health risk, they're pretty uniform in terms 25 of valuing health risk, 90 percent of them</p>	<p style="text-align: right;">Page 228</p> <p>1 cigarettes to the taste of what you referred 2 to as regular cigarettes? 3 A. And I know I'm splitting straws here, but I 4 really want to be accurate as a 5 statistician. The average of respondents is 6 such that the partworth of light -- taste of 7 light is higher than the partworth of taste 8 of regular. 9 Q. As we sit here -- 10 A. It's the average of respondents, not the 11 average respondent. 12 Q. As we sit here today, you have no opinion on 13 whether the choice to smoke the particular 14 cigarettes that the respondents smoked was 15 driven by taste or by the word "light" or by 16 some other factor; is that correct? 17 MR. GALLAGHER: Objection to the 18 form. 19 A. That's not correct. 20 Q. As we sit here today, do you understand 21 that -- let me represent to you that every 22 ad for every cigarette in the United States 23 for the last few decades has represented the 24 tar and nicotine content by FTC measure of 25 the cigarette in question --</p>
<p style="text-align: right;">Page 227</p> <p>1 at least, and furthermore, that they're 2 willing to make trade-offs of health risk 3 versus monetary value. 4 Q. That -- 5 THE WITNESS: Have we been going 6 for about an hour? Because I'm getting a 7 little tired. 8 MR. GALLAGHER: If you need a 9 break, say so. 10 THE WITNESS: Yeah. 11 Q. I'll just ask a couple more, and then we can 12 take a break if you want. 13 A. I just need a candy bar. 14 Q. Okay. Well, we'll inquire more about this 15 later. The majority of light smokers 16 preferred the taste of lights, either the 17 ultra lights or regulars in your survey; is 18 that correct? 19 A. Well, what -- I'm trying to remember the 20 exact numbers, but it is fair to say that 21 the average importance of the partworth for 22 light taste was higher than the partworth 23 for regular taste. 24 Q. Which is to say that the average respondent 25 preferred light -- the taste of light</p>	<p style="text-align: right;">Page 229</p> <p>1 A. Okay. You're giving -- you're asking me to 2 accept the fact that -- 3 Q. Accept that. 4 A. -- I have no way of verifying sitting 5 here -- 6 Q. Yes. 7 A. -- today? 8 Q. Yes, accept it. 9 A. Okay. 10 Q. And so that any consumer who wants to know 11 the tar and nicotine content of his 12 cigarette as measured by the FTC method can 13 see that on any ad and every ad for 14 cigarettes? Do you understand that's the 15 predicate of this? 16 MR. GALLAGHER: That's a 17 hypothetical, correct? 18 MR. GROSSMAN: Yes. 19 A. Okay. So you're asking me to accept that 20 any consumer who has access to ads can read 21 those ads, and you've also asked me to 22 accept the fact that every ad has a 23 statement of tar and nicotine? 24 Q. Yes. Knowing that, totally separate from 25 the word "light" or other descriptors such</p>

<p style="text-align: right;">Page 230</p> <p>1 as "mild" or "ultra light" or anything else, 2 as we sit here today, it is accurate, is it 3 not, that you have not measured the extent 4 to which the word "light" on the cigarettes 5 in question was a driver in the choice of 6 individuals' brands in buying the cigarettes 7 that the 627 respondents in your survey 8 smoked? 9 MR. GALLAGHER: Objection to the 10 form. 11 A. It's kind of a complicated question. You've 12 asked me to accept two statements as 13 hypothetical, you've asked me to accept that 14 all ads contain tar and nicotine, and you've 15 also asked me to accept that all consumers 16 would have access to these ads, okay? And 17 after that what we do know is that their 18 perceptions of health risk and their 19 perceptions of taste do affect their 20 decisions. 21 Now, I don't know and I have not done 22 a survey to determine the impact of the word 23 "light," specific -- taken totally as 24 separately what that has on health risk. 25 That's other facts in the case that I am not</p>	<p style="text-align: right;">Page 232</p> <p>1 MR. GROSSMAN: Well, we're doing 2 the best we can. 3 THE WITNESS: Okay. 4 MR. GROSSMAN: It's not my office, 5 but Paul Nemser, who is here, has made the 6 request, so... 7 THE WITNESS: Okay. I appreciate 8 that, because it really was getting pretty 9 hot in here. 10 MR. GROSSMAN: I understand. 11 THE WITNESS: And I see the court 12 reporter saying yes. 13 MR. GROSSMAN: That's why I've got 14 all this ice in my water. 15 BY MR. GROSSMAN: 16 Q. Dr. Hauser, continuing, I was asking you 17 earlier about representativeness of the 18 population being surveyed. The population 19 that buys any particular product may not be 20 representative of the population as a whole; 21 is that correct? 22 A. Well, the target of -- the survey should 23 target a population. And we want a 24 representative set of the target population. 25 So the survey targeted light smokers, so we</p>
<p style="text-align: right;">Page 231</p> <p>1 providing an expert opinion on, so I am not 2 providing an expert opinion as to whether or 3 not light is the driver of health risk or 4 taste; however, I do know that once 5 consumers have perceptions of health risks 6 and taste, health risks and taste are 7 drivers of their decision, and furthermore 8 that health risks are a driver of the 9 decision of the vast majority of consumers. 10 MR. GROSSMAN: Okay. We can take 11 the break that you wanted. 12 THE VIDEOGRAPHER: The time is 13 3:48. This is the end of Tape 4, and we are 14 off the record. 15 (Recess taken.) 16 THE VIDEOGRAPHER: The time is 4:02 17 p.m. This is the beginning of Tape 5, and 18 we're back on the record. 19 THE WITNESS: Okay. Did we manage 20 to get the temperature corrected? 21 MR. GROSSMAN: We have asked for it 22 to be corrected. 23 THE WITNESS: Corrected, yeah. 24 Because we might get more transcript time if 25 we didn't -- if it wasn't so hot in here.</p>	<p style="text-align: right;">Page 233</p> <p>1 began with an overall represent -- sample of 2 the total population, and our target 3 population was that subset which smoked 4 light cigarettes. 5 Q. It would be fair to say, would it not, that 6 your target population had a number of 7 attributes: One was they were light 8 smokers, correct? 9 A. Well, the target population were people who 10 were light smokers, yes. 11 Q. In fact, the population surveyed were light 12 smokers who were Internet users who had 13 volunteered to engage in surveys with 14 Greenfield Online; is that correct? 15 A. Well, the following is the case: Greenfield 16 Online recruited people, and it's certainly 17 one of the issues that we've been working 18 with over the years to determine whether or 19 not an Internet panel is indeed 20 representative, and I believe they are. 21 There's a lot of evidence now that Internet 22 panels are representative. 23 So it appears that the propensity to 24 opt into an Internet panel, which of course 25 means they have some sort of Internet</p>

<p style="text-align: right;">Page 234</p> <p>1 access, does not correlate with the</p> <p>2 variables of interest in most surveys, and I</p> <p>3 don't believe that it correlates with the</p> <p>4 variables of interest here.</p> <p>5 MR. GROSSMAN: Move to strike as</p> <p>6 non-responsive.</p> <p>7 Q. Every respondent in this survey was a light</p> <p>8 smoker who had Internet access and who</p> <p>9 volunteered to be interviewed in Greenfield</p> <p>10 Online surveys, correct?</p> <p>11 MR. GALLAGHER: Objection, asked</p> <p>12 and answered.</p> <p>13 A. I targeted light smokers, and I used a</p> <p>14 Greenfield Online Internet panel to</p> <p>15 obtain -- to target them.</p> <p>16 Q. Have you compared Greenfield Online's method</p> <p>17 of obtaining respondents with methods of</p> <p>18 other Internet survey companies in obtaining</p> <p>19 respondents?</p> <p>20 A. That's -- I'm actually one of the experts</p> <p>21 now who's been asked to -- is some of this</p> <p>22 possible, and so we've been trying to do it</p> <p>23 to the greatest of our ability. And there</p> <p>24 are -- the details of these panels vary.</p> <p>25 There are other panels out there, but it</p>	<p style="text-align: right;">Page 236</p> <p>1 marked for identification purposes as</p> <p>2 Exhibit 12, which is a Harvard Business</p> <p>3 School monograph entitled "Conjoint</p> <p>4 Analysis: A Manager's Guide." Are you</p> <p>5 familiar with this?</p> <p>6 A. Well, I'm familiar with the author. It's</p> <p>7 probably been quite a while since I've read</p> <p>8 this. It's a 1990 article. It's been 16</p> <p>9 years since it's been written -- actually 16</p> <p>10 years since the copyright. I don't know</p> <p>11 when Dr. Dolan had written it. And a lot</p> <p>12 has changed since then, but I'll be happy to</p> <p>13 comment on specific aspects on Dr. Dolan's</p> <p>14 article.</p> <p>15 Q. Okay. Good. Could you look with me on Page</p> <p>16 4?</p> <p>17 MR. GALLAGHER: Should he have time</p> <p>18 to read the document?</p> <p>19 MR. GROSSMAN: Well, he says he's</p> <p>20 familiar, but it's been a long time. I'm</p> <p>21 going to go into specifics.</p> <p>22 A. I said it's been a long time since I've read</p> <p>23 this. It's different from saying I'm</p> <p>24 familiar with it. If I need to read the</p> <p>25 entire document, I'll do so. But if I can</p>
<p style="text-align: right;">Page 235</p> <p>1 appears that Greenfield Online is one of the</p> <p>2 panels who does -- takes care in terms of</p> <p>3 maintaining this panel, and to the best of</p> <p>4 my understanding, they indeed are an opt-in</p> <p>5 panel.</p> <p>6 Q. They are an opt-in panel?</p> <p>7 A. Opt-in panel. And opt-in panels seem to be</p> <p>8 a very viable, representative, valid and</p> <p>9 reliable way of obtaining data on consumers.</p> <p>10 MR. GROSSMAN: Move to strike the</p> <p>11 last part of the answer as non-responsive.</p> <p>12 Q. Doctor --</p> <p>13 MR. GROSSMAN: (To Mr. Koethe.)</p> <p>14 Let's get out the Harvard conjoint manager's</p> <p>15 guide.</p> <p>16 THE VIDEOGRAPHER: Mr. Grossman,</p> <p>17 can I ask you to put your microphone on?</p> <p>18 MR. GROSSMAN: Oh, I'm sorry.</p> <p>19 Can we mark this as 12? Is that what</p> <p>20 we're up to?</p> <p>21 (Exhibit No. 12, Harvard Business</p> <p>22 School monograph entitled "Conjoint</p> <p>23 Analysis: A Manager's Guide," marked for</p> <p>24 identification.)</p> <p>25 Q. Right. Dr. Hauser, I hand you what's been</p>	<p style="text-align: right;">Page 237</p> <p>1 answer something in context and the context</p> <p>2 is clear, I'll certainly make that attempt</p> <p>3 as well.</p> <p>4 Q. Do you see Figure A on Page 4?</p> <p>5 A. I see Figure A, yes.</p> <p>6 Q. Do you see it says "Decision Stages in</p> <p>7 Conjoint Study"?</p> <p>8 A. Yes.</p> <p>9 Q. And Decision 1 is -- or Stage 1 is to</p> <p>10 "Determine the relevant attributes"?</p> <p>11 A. Yes.</p> <p>12 Q. Now, in this case you chose four attributes</p> <p>13 for your conjoint study, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you agree that the first stage and a</p> <p>16 critical stage of developing a conjoint</p> <p>17 study is to determine the relevant</p> <p>18 attributes?</p> <p>19 A. Well, I think that -- I mean, at this point</p> <p>20 we're going to have to read exactly what Dr.</p> <p>21 Dolan means when he says, "Determine the</p> <p>22 relevant attributes." What we did in this</p> <p>23 survey that I'm quite happy with as to</p> <p>24 relevance, that the attributes that were</p> <p>25 chosen were attributes that a priority</p>

<p style="text-align: right;">Page 250</p> <p>1 Brunswick lens model that we were talking</p> <p>2 about earlier in this deposition. So I, in</p> <p>3 fact, have included people's perceptions of</p> <p>4 both taste and of health.</p> <p>5 Q. You've included people's images of</p> <p>6 perceptions of taste -- and we'll go over</p> <p>7 these -- as well as pack type and price.</p> <p>8 Let me put it this way: Do you know whether</p> <p>9 any major brand of cigarette in the United</p> <p>10 States is marketed without a choice of both</p> <p>11 box and soft pack?</p> <p>12 A. Sitting here today, I do not know if there's</p> <p>13 any major brand in all its variants that is</p> <p>14 modeled without a choice of hard pack and</p> <p>15 soft pack.</p> <p>16 Q. Do you know if there's any difference in the</p> <p>17 price of premium brands of cigarettes in the</p> <p>18 United States?</p> <p>19 MR. GALLAGHER: Objection to the</p> <p>20 form.</p> <p>21 A. I have not done a systematic study of the</p> <p>22 price equilibrium in the marketplace, and</p> <p>23 I'm not providing any opinions, any expert</p> <p>24 opinions with respect to the price</p> <p>25 equilibrium in the marketplace.</p>	<p style="text-align: right;">Page 252</p> <p>1 A. Well --</p> <p>2 MR. GALLAGHER: Objection to the</p> <p>3 form.</p> <p>4 A. -- that's not quite true. We are asking the</p> <p>5 consumer to focus on their brand of</p> <p>6 cigarettes, so each consumer is focused on</p> <p>7 the particular brand of cigarettes that</p> <p>8 they're interested in. And there's a lot of</p> <p>9 description which we can read into the</p> <p>10 record, which as we've indicated before has</p> <p>11 been carefully pretested.</p> <p>12 MR. GROSSMAN: Move to strike as</p> <p>13 non-responsive.</p> <p>14 Q. Doctor, there is no question on this survey</p> <p>15 that asks respondents to compare the taste</p> <p>16 of, say, a Marlboro Light to, say, the taste</p> <p>17 of a Camel Light; is that correct?</p> <p>18 MR. GALLAGHER: Objection to the</p> <p>19 form, asked and answered.</p> <p>20 A. Well, I believe that I've answered that time</p> <p>21 and again. And if you keep want to asking</p> <p>22 it, I'll give you the same answer again.</p> <p>23 The survey is focused on the person's brand</p> <p>24 of light cigarette. They are not asked to</p> <p>25 compare ultra -- we're not doing a</p>
<p style="text-align: right;">Page 251</p> <p>1 Q. In your study you had five categories of</p> <p>2 taste -- or I'm sorry, you had three</p> <p>3 categories of taste, tastes like an ultra</p> <p>4 light, tastes like a light, tastes like a</p> <p>5 regular; is that correct?</p> <p>6 A. I believe that was correct. It's -- I could</p> <p>7 either accept that that -- it's getting late</p> <p>8 in the day. I'm getting tired. I'll look</p> <p>9 at this to be sure, but I believe that was</p> <p>10 correct.</p> <p>11 Q. Be my guest.</p> <p>12 A. And I'll do this because you're probably</p> <p>13 going to ask me about all the other</p> <p>14 attributes, so I'll --</p> <p>15 Q. There's only one other attribute.</p> <p>16 A. There's four attributes total.</p> <p>17 Q. Yes. Well, we went through box and price,</p> <p>18 and now we're going through taste, and the</p> <p>19 remaining one is health.</p> <p>20 A. Okay. There are three levels of taste,</p> <p>21 tastes like a regular cigarette, tastes like</p> <p>22 your brand of light cigarettes, tastes like</p> <p>23 an ultra light cigarette.</p> <p>24 Q. Okay. There's no distinction made by brand</p> <p>25 on taste; is that correct?</p>	<p style="text-align: right;">Page 253</p> <p>1 comparison of their perceptions of different</p> <p>2 brands of cigarettes.</p> <p>3 Q. What number was --</p> <p>4 (Discussion off the record.)</p> <p>5 Q. Doctor, could you look with me at Exhibit</p> <p>6 No. 4.</p> <p>7 A. Okay. Yeah, Exhibit No. 4.</p> <p>8 Q. Let me represent to you that this represents</p> <p>9 the market share of different brands of</p> <p>10 cigarettes in the United States in 2002, all</p> <p>11 right? For purposes of this series of</p> <p>12 questions, you'll accept that?</p> <p>13 A. What -- this actually matters. What do you</p> <p>14 mean by "market share"?</p> <p>15 Q. Percent of the number of cigarettes sold in</p> <p>16 the United States.</p> <p>17 A. Okay. So this is market share by volume --</p> <p>18 Q. By volume of --</p> <p>19 A. That's by volume of cigarettes, and it's not</p> <p>20 by volume of packs?</p> <p>21 Q. That's right. Well, all packs contain 20</p> <p>22 cigarettes --</p> <p>23 A. Okay.</p> <p>24 Q. -- so the two are synonymous.</p> <p>25 Doctor, looking at this with me, you</p>

<p style="text-align: right;">Page 254</p> <p>1 see of the brands that are listed which are</p> <p>2 the top 50 brands there are following</p> <p>3 lights, Marlboro Lights with an 11 point --</p> <p>4 A. Can I circle these, too, like you're doing?</p> <p>5 Q. Sure, if you want.</p> <p>6 A. Can I have a pen or something to do it?</p> <p>7 Q. There's the highlighter that I was using.</p> <p>8 A. Okay.</p> <p>9 Q. I happen to have several with me. Part of</p> <p>10 my occupation.</p> <p>11 A. Okay. Now what do you want me to do?</p> <p>12 Q. Let's highlight, if you like, the lights</p> <p>13 listed among these top 50 brands.</p> <p>14 A. Okay.</p> <p>15 Q. Marlboro Lights, 85 box, 11.51 percent</p> <p>16 share. Do you see that?</p> <p>17 A. Okay. I've highlighted it.</p> <p>18 Q. And third down, Marlboro Lights 100</p> <p>19 millimeter box --</p> <p>20 A. Okay. I've highlighted it.</p> <p>21 THE REPORTER: I'm sorry, I didn't</p> <p>22 catch the end of yours.</p> <p>23 Q. 3.07 share. A few below that, Marlboro</p> <p>24 Lights 85 soft pack, do you see that?</p> <p>25 A. We skipped over Camel regular --</p>	<p style="text-align: right;">Page 256</p> <p>1 Marlboro Medium Light 85 box.</p> <p>2 MR. GALLAGHER: What about Marlboro</p> <p>3 Lights Light 85 SP?</p> <p>4 MR. GROSSMAN: We do want that.</p> <p>5 MR. GALLAGHER: You do want that?</p> <p>6 MR. GROSSMAN: Yeah.</p> <p>7 MR. GALLAGHER: So you want me to</p> <p>8 highlight that for Dr. Hauser?</p> <p>9 MR. GROSSMAN: Yeah, please.</p> <p>10 MR. GALLAGHER: Okay.</p> <p>11 BY MR. GROSSMAN:</p> <p>12 Q. Doctor, you've been handed what's been</p> <p>13 marked for identification purposes which is</p> <p>14 now highlighted --</p> <p>15 A. Wait a minute. This one says Exhibit 4.</p> <p>16 Q. Oh, I'm sorry, Exhibit 4, you're correct.</p> <p>17 -- which has now been highlighted to</p> <p>18 list those of the top 50 brands and styles</p> <p>19 in 2002 that were light cigarettes,</p> <p>20 designated as light cigarettes. Do you see</p> <p>21 that?</p> <p>22 A. Yes, I do. And by the way, does this add up</p> <p>23 to 100 percent?</p> <p>24 Q. No, it doesn't, because it's only the top 50</p> <p>25 brands.</p>
<p style="text-align: right;">Page 255</p> <p>1 Q. We're skipping over all the regulars.</p> <p>2 A. What does this mean, "regular light LT"?</p> <p>3 Q. Oh, I'm sorry, it means the -- you're right.</p> <p>4 In this context it means it's the Camel</p> <p>5 that's not the special blend or the Turkish</p> <p>6 blend. That's what the use of the term</p> <p>7 "regular" in that context is.</p> <p>8 The Camel Light 85 box, 2.03, correct?</p> <p>9 A. So LT means light?</p> <p>10 Q. Yes.</p> <p>11 A. Okay.</p> <p>12 Q. Marlboro Blue Ultra Light, don't do that.</p> <p>13 That's an ultra light.</p> <p>14 A. What?</p> <p>15 Q. I --</p> <p>16 A. Well, why don't you do it and give it to me.</p> <p>17 Q. I'll be happy to.</p> <p>18 (Pause.)</p> <p>19 Q. Doctor, I've handed you the highlighted</p> <p>20 copy.</p> <p>21 MR. GALLAGHER: You don't want</p> <p>22 highlighted Marlboro Lights Light 85 SP soft</p> <p>23 pack?</p> <p>24 MR. GROSSMAN: No, I don't want</p> <p>25 those -- the one that I didn't do is the</p>	<p style="text-align: right;">Page 257</p> <p>1 A. Okay. And what does that add up to?</p> <p>2 Q. I don't know. But there are hundreds of</p> <p>3 brands and styles in the United States.</p> <p>4 Reynolds alone, I know, since the merger now</p> <p>5 has about three or four hundred brands and</p> <p>6 styles, but most of them have infinitesimal</p> <p>7 shares. The market is dominated by just a</p> <p>8 few cigarettes.</p> <p>9 As you can see, the most popular</p> <p>10 single brand, according to this, and style,</p> <p>11 is Marlboro Lights 85 box. Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. With an 11 1/2 percent share of the market.</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And you see about half of all the cigarettes</p> <p>17 among the top 50 in the United States, just</p> <p>18 under half, are highlighted as light</p> <p>19 cigarettes?</p> <p>20 A. It seems to be the order of magnitude of a</p> <p>21 half. We haven't counted them.</p> <p>22 Q. Yeah. Now, the 50th most popular style is</p> <p>23 Winston Light 100. Do you see that?</p> <p>24 A. Okay. And what does the "SP" mean?</p> <p>25 Q. I believe it means soft pack.</p>

<p style="text-align: right;">Page 258</p> <p>1 A. Okay.</p> <p>2 Q. Doctor, what accounts for the difference,</p> <p>3 the huge difference in market penetration of</p> <p>4 these different brands?</p> <p>5 MR. GALLAGHER: Hold on. I just</p> <p>6 saw another one. Second to last one, do you</p> <p>7 want Marlboro Medium Light?</p> <p>8 MR. GROSSMAN: No.</p> <p>9 MR. GALLAGHER: No?</p> <p>10 MR. GROSSMAN: No, because it's</p> <p>11 called Marlboro Medium, it's not called</p> <p>12 light. It's a low tar.</p> <p>13 A. Oh, LT stands for low tar, okay.</p> <p>14 Q. Yeah.</p> <p>15 A. Oh, some of these --</p> <p>16 MR. GALLAGHER: Hold on. In</p> <p>17 Marlboro Medium LT 100 box, LT means low</p> <p>18 tar?</p> <p>19 MR. GROSSMAN: It is a low tar, but</p> <p>20 it is not marketed as a light, it's marketed</p> <p>21 as a medium. That particular cigarette is</p> <p>22 marketed as a medium.</p> <p>23 A. So then why is Camel regular low tar</p> <p>24 highlighted?</p> <p>25 MR. GALLAGHER: It's gotten a bit</p>	<p style="text-align: right;">Page 260</p> <p>1 this list; is that correct?</p> <p>2 A. I don't see something that -- anything,</p> <p>3 excuse me, that says Benson & Hedges on this</p> <p>4 list.</p> <p>5 Q. So what accounts for the vast differences in</p> <p>6 market share of these different brands that</p> <p>7 are called light?</p> <p>8 MR. GALLAGHER: Objection to the</p> <p>9 form. It's beyond the expert opinion he's</p> <p>10 rendering.</p> <p>11 A. I haven't done a study of brand differences,</p> <p>12 and I've so testified it's not part of my</p> <p>13 expert opinion.</p> <p>14 Q. Okay. Your conjoint analysis did not</p> <p>15 capture the reasons why some brands are so</p> <p>16 much more popular among light cigarettes</p> <p>17 than others; is that correct?</p> <p>18 A. My conjoint analysis, each person is</p> <p>19 conditioned upon having made that choice</p> <p>20 already, so someone answering my question, I</p> <p>21 know what they -- what particular brand they</p> <p>22 asked. I'm not asking the attributes varied</p> <p>23 by brand other than the four attributes that</p> <p>24 I've indicated. So I'm not providing an</p> <p>25 expert opinion with respect to brand</p>
<p style="text-align: right;">Page 259</p> <p>1 confusing.</p> <p>2 MR. GROSSMAN: It has gotten</p> <p>3 confusing.</p> <p>4 Q. Leave aside the questions of which ones are</p> <p>5 marked and which ones are not for a moment.</p> <p>6 A. Okay.</p> <p>7 Q. Marlboro Lights have a -- in their 85</p> <p>8 millimeter box have an 11 1/2 percent market</p> <p>9 share of all the cigarettes sold in the</p> <p>10 United States, okay?</p> <p>11 A. Yes.</p> <p>12 Q. Winston -- Winston Lights have a much lower</p> <p>13 penetration?</p> <p>14 A. Yes.</p> <p>15 Q. Parliament Lights aren't even in the top 50,</p> <p>16 Parliament Light 100s are not even in the</p> <p>17 top 50; is that correct? They're not listed</p> <p>18 in here?</p> <p>19 A. I don't see a Parliament here. Well, what's</p> <p>20 this (indicating)?</p> <p>21 Q. Parliament Light 85 is included?</p> <p>22 A. Yeah.</p> <p>23 Q. Parliament Light 100 is not?</p> <p>24 A. Okay. So Parliament Light 85 is, okay.</p> <p>25 Q. Benson & Hedges Lights are not included on</p>	<p style="text-align: right;">Page 261</p> <p>1 decision.</p> <p>2 Q. Your conjoint analysis measured four factors</p> <p>3 that we've gone over. It did not measure or</p> <p>4 attempt to measure the extent to which brand</p> <p>5 entered into the choice of cigarette smokers</p> <p>6 in deciding which cigarette to smoke; is</p> <p>7 that correct?</p> <p>8 MR. GALLAGHER: Objection, asked</p> <p>9 and answered.</p> <p>10 A. Well, I have answered it, but, again, the</p> <p>11 person who is answering this, they have</p> <p>12 already made the brand decision. Now I'm</p> <p>13 asking them hypothetical questions, conjoint</p> <p>14 profiles within that brand. So I did not do</p> <p>15 a brand study, nor am I providing an expert</p> <p>16 opinion with respect to interbrand</p> <p>17 decisions.</p> <p>18 Q. Doctor, let me hand you what we'll mark as</p> <p>19 Exhibit 12, I believe -- Exhibit 13, which</p> <p>20 is a compilation of materials that have been</p> <p>21 provided to us by plaintiffs' counsel --</p> <p>22 MR. GALLAGHER: I'm sorry, can I</p> <p>23 have a copy of that?</p> <p>24 MR. GROSSMAN: Yes.</p> <p>25 Q. -- relating to your pretests and to your</p>

<p style="text-align: right;">Page 274</p> <p>1 than one person looking at this.</p> <p>2 Q. In fact, only one person looked at the</p> <p>3 interviews that Ms. Schussheim conducted in</p> <p>4 this case; is that correct?</p> <p>5 A. No.</p> <p>6 Q. Who else looked at them?</p> <p>7 A. Ms. -- okay. There are three people who</p> <p>8 were involved in this, Mr. Gaskin, Ms.</p> <p>9 Schussheim and myself, and I was fully</p> <p>10 briefed on this, and furthermore, the</p> <p>11 particular paper we're talking about now is</p> <p>12 the qualitative interviews to identify what</p> <p>13 consumers' needs were. It's a very specific</p> <p>14 technical definition of what consumer needs</p> <p>15 are. This is -- now, qualitative interviews</p> <p>16 determine the wording for a questionnaire.</p> <p>17 So two different purposes.</p> <p>18 MR. GALLAGHER: When you say</p> <p>19 "this," we have to say --</p> <p>20 THE WITNESS: Okay.</p> <p>21 MR. GALLAGHER: -- what you're</p> <p>22 referring to.</p> <p>23 A. Let's be very specific. We're now talking</p> <p>24 about two different things. The one article</p> <p>25 is "The Voice of the Customer" article,</p>	<p style="text-align: right;">Page 276</p> <p>1 A. We did record the information that was</p> <p>2 required.</p> <p>3 Q. I'm asking --</p> <p>4 A. What I'm trying to get at here is whether or</p> <p>5 not people can respond to the questions, and</p> <p>6 there are people involved in determining</p> <p>7 whether or not these people could respond to</p> <p>8 the questions, Mr. Gaskin, Ms. Schussheim</p> <p>9 and myself.</p> <p>10 Q. Doctor, as we sit here today, can you recall</p> <p>11 any of the attributes -- I'll rephrase the</p> <p>12 question.</p> <p>13 As we sit here today, can you recall</p> <p>14 whether the seven people interviewed by Ms.</p> <p>15 Schussheim believed light cigarettes to be</p> <p>16 more dangerous, equally dangerous or less</p> <p>17 dangerous than full-flavored filter</p> <p>18 cigarettes?</p> <p>19 MR. GALLAGHER: Objection to the</p> <p>20 form.</p> <p>21 A. That was not the purpose of the qualitative</p> <p>22 interviews. The purpose of the qualitative</p> <p>23 interviews were to determine whether or not</p> <p>24 they could answer the questions that we were</p> <p>25 asking. And Ms. Schussheim briefed me on</p>
<p style="text-align: right;">Page 275</p> <p>1 which is a study of the ability to identify</p> <p>2 customer needs. The other is the</p> <p>3 qualitative interviews done in the study</p> <p>4 upon which I'm providing an expert opinion.</p> <p>5 Here the qualitative interviews were to</p> <p>6 provide background, but more importantly the</p> <p>7 specific use of these qualitative interviews</p> <p>8 were to identify that consumers could</p> <p>9 respond to the questions that we were</p> <p>10 developing and to put the questions into</p> <p>11 words and phrases that consumers were using.</p> <p>12 Q. Doctor, Ms. Schussheim is the only person --</p> <p>13 let me go back over this. You've already</p> <p>14 told us that Ms. Schussheim did not take</p> <p>15 notes of her interviews and that no</p> <p>16 recording was made of the interviews. Can</p> <p>17 you tell us the brands of the seven people</p> <p>18 who she interviewed?</p> <p>19 A. I've already testified that we did not</p> <p>20 record any of those demographic variables.</p> <p>21 I mean, you can ask me, do I know whether or</p> <p>22 not these people drove particular brands of</p> <p>23 cars. We didn't record that information,</p> <p>24 either.</p> <p>25 Q. I'm not asking you irrelevant --</p>	<p style="text-align: right;">Page 277</p> <p>1 these, and at the end of the qualitative</p> <p>2 interviews, coupled with the information</p> <p>3 also obtained from Mr. Gaskin, we were able</p> <p>4 to write a questionnaire that could obtain</p> <p>5 that information. And as is appropriate, we</p> <p>6 did not record the actual answers from the</p> <p>7 pretest interviews because we did not use</p> <p>8 those in analysis, again, as is recommended</p> <p>9 not only by scientific and academic press,</p> <p>10 but by the federal court rules.</p> <p>11 MR. GROSSMAN: What? Could you</p> <p>12 read that back, please.</p> <p>13 (Record read.)</p> <p>14 Q. Are you --</p> <p>15 A. Well, rules is the right -- the wrong -- I</p> <p>16 mean, let me clarify this. When I say</p> <p>17 "rules," it sounds like I'm making a legal</p> <p>18 opinion. I'm not making a legal opinion.</p> <p>19 Q. Are you suggesting that the rules of any</p> <p>20 court that you've ever appeared before</p> <p>21 required you not to keep a record or to</p> <p>22 destroy evidence of interviews that you</p> <p>23 conduct?</p> <p>24 MR. GALLAGHER: Objection to the</p> <p>25 form.</p>

<p style="text-align: right;">Page 290</p> <p>1 analysis and to develop a questionnaire that</p> <p>2 uses words and phrases that consumers use to</p> <p>3 describe the features of cigarettes."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. So before you -- these interviews were</p> <p>7 conducted on March 9, 2005, the four factors</p> <p>8 to be considered in your conjoint analysis</p> <p>9 had not been firmly identified; is that</p> <p>10 correct?</p> <p>11 A. Well, okay. Again, the process of --</p> <p>12 there's features we're going to explore, and</p> <p>13 it's of course an iterative process, but the</p> <p>14 final decision is made after the qualitative</p> <p>15 interviews. And certainly, as is</p> <p>16 appropriate to the scientific method, we</p> <p>17 have some hypotheses going in there that can</p> <p>18 be updated and modified after listening to</p> <p>19 customers.</p> <p>20 Q. Part of the purpose of the in-depth</p> <p>21 interviews conducted on March 9 was to</p> <p>22 determine the factors to be included in the</p> <p>23 Web-based questionnaire that ultimately was</p> <p>24 used to support your opinion in this case,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 292</p> <p>1 A. Yes.</p> <p>2 Q. Next paragraph, "If he had to switch, he'd</p> <p>3 smoke another 100."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Did you consider length of cigarettes as one</p> <p>7 of the factors to be tested?</p> <p>8 A. Length is one of the cigarettes (sic) we</p> <p>9 could have involved, but fortunately because</p> <p>10 of the properties of the Gumbel</p> <p>11 distribution, as long as it was not --</p> <p>12 basically as long as it satisfied the</p> <p>13 appropriate statistical properties, it would</p> <p>14 not bias any of the other coefficients. So</p> <p>15 we're making some trade-offs among focus on</p> <p>16 particular attributes, in this case health,</p> <p>17 price and taste, as well as we put in pack</p> <p>18 size.</p> <p>19 Q. You can't do the calculation of the Gumbel</p> <p>20 distribution until after the survey is</p> <p>21 conducted; is that correct?</p> <p>22 A. No, but we can establish qualitatively</p> <p>23 whether or not there's going to be</p> <p>24 interactions by talking to the consumers.</p> <p>25 Q. You didn't -- at the time when you decided</p>
<p style="text-align: right;">Page 291</p> <p>1 A. System of the qualitative inter -- the</p> <p>2 qualitative interviews, combined with other</p> <p>3 information, ultimately helped us develop</p> <p>4 the questionnaire in words and phrases that</p> <p>5 consumers could use. Certainly there were</p> <p>6 some issues going in that we wanted to</p> <p>7 find -- that we had hypotheses that would be</p> <p>8 features that were relevant.</p> <p>9 Q. Doctor, if you could turn with me on Exhibit</p> <p>10 13 to --</p> <p>11 A. Which one is Exhibit 13?</p> <p>12 Q. It's the interview set that you should have</p> <p>13 out.</p> <p>14 A. Okay.</p> <p>15 Q. -- to the notes that Mr. Gaskin took of the</p> <p>16 seven interviews that he conducted on March</p> <p>17 9, 2005. The first is of a man named Bert.</p> <p>18 A. Okay. We have Bert. This is Hauser 041.</p> <p>19 Q. Yes, it is. Do you see second paragraph,</p> <p>20 "Smoked Parliaments - and the brand changed</p> <p>21 to be all lights. He smoked the 100s. No</p> <p>22 taste difference, no difference in smoking.</p> <p>23 He didn't even notice at first. He was okay</p> <p>24 with that."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 293</p> <p>1 the four factors that were going to be</p> <p>2 studied you hadn't run the Gumbel</p> <p>3 distribution; is that correct?</p> <p>4 MR. GALLAGHER: Objection to the</p> <p>5 form.</p> <p>6 A. You know, at this point run the Gumbel</p> <p>7 distribution, in fact, we ran the</p> <p>8 estimation. There are properties of the</p> <p>9 Gumbel distribution. I certainly knew the</p> <p>10 properties of this Gumbel distribution,</p> <p>11 which is well established in the literature</p> <p>12 that this is a way to model if there's going</p> <p>13 to be unobserved attributes in there and</p> <p>14 that those unobserved attributes are not</p> <p>15 going to bias the coefficients of the</p> <p>16 attributes that are in that.</p> <p>17 Q. Did you consider whether length of</p> <p>18 cigarettes was one of the principal factors</p> <p>19 that smokers consider in making a decision</p> <p>20 on which cigarettes to purchase?</p> <p>21 MR. GALLAGHER: Objection to the</p> <p>22 form.</p> <p>23 A. Length of cigarettes is one of the many</p> <p>24 other attributes we could have put in there.</p> <p>25 I do not believe putting that attribute in</p>

<p style="text-align: right;">Page 294</p> <p>1 would have biased the coefficients one way 2 or the other. Certainly, you know, one 3 might put all sorts of attributes in here. 4 For this person it mattered, for other 5 people it won't, but it's not going to bias 6 the coefficients that are in that 7 estimation. 8 Q. Did you consider whether to include it in 9 the factors to be studied? 10 MR. GALLAGHER: Objection, asked 11 and answered. 12 A. I did not feel that it was necessary to put 13 the length of the cigarettes in there. 14 There were a lot of attributes that we could 15 have put in that we decided not to put into 16 this -- 17 Q. Have you -- 18 A. -- and it's not going to bias the estimates. 19 Q. Have you reviewed any studies conducted by 20 cigarette manufacturers or anyone else on 21 the importance of length of cigarettes in 22 consumers' decisions of which cigarettes to 23 buy? 24 A. I have not reviewed any studies with respect 25 to importance of the length of the</p>	<p style="text-align: right;">Page 296</p> <p>1 and a half of notes and you're reading one 2 question, but go ahead and answer if you 3 can, Doctor. 4 A. Certainly this statement would be 5 consistent, but it may not be. It also 6 could be conditionally lexicographic 7 conditioned upon having chosen a 100. He 8 could then be making compensatory trade-offs 9 among the attributes that we did measure and 10 the coefficients we obtained for the 11 relative trade-offs -- remember, conjoint is 12 always dealing with relatives, and we're 13 estimating those relatives conditioned upon 14 the other attributes. 15 And so just as the same answer to 16 brand, as long as I have unbiased 17 coefficients among those attributes, my 18 survey is going to be accurate with respect 19 to those coefficients, or the estimation 20 will be accurate with respect to those 21 coefficients. 22 MR. GROSSMAN: Move to strike as 23 non-responsive. 24 Q. Doctor, looking above the empty line, 25 there's one line that -- about 80 percent</p>
<p style="text-align: right;">Page 295</p> <p>1 cigarettes, but just as we've indicated 2 before, people are asked to focus on their 3 particular brand and then make a partial 4 decision with respect to all the attributes 5 that we did specify. As long as these are 6 separable utility functions, it's perfectly 7 acceptable and it's going to give us 8 unbiased estimates. 9 MR. GROSSMAN: Move to strike as 10 non-responsive. 11 Q. On the line "If he had to switch, he'd smoke 12 another 100," this respondent, Bert -- 13 A. Well, let's complete the line. "Would look 14 around." 15 Q. "Would look around," yes. "If he had to 16 switch, he would smoke another 100 - would 17 look around." 18 With respect to this respondent, Bert, 19 it appears that he could be lexicographic 20 with regard to 100 length cigarettes; is 21 that correct? 22 MR. GALLAGHER: Again, I'll object 23 to the form given the fact that this is 24 being taken out of context in the two- 25 page -- what appears to be at least a page</p>	<p style="text-align: right;">Page 297</p> <p>1 down the page -- it's empty above that -- 2 there's a paragraph that is "Lite healthier, 3 they say that but he doesn't think it works. 4 The burning tobacco is going to be there 5 either way." Do you see that? "Each way," 6 do you see that? 7 A. Yes. 8 Q. As reported to you, this first respondent 9 did not believe that light cigarettes were 10 healthier than non-light cigarettes; is that 11 correct? 12 MR. GALLAGHER: Objection to the 13 form. 14 A. Well, because we're -- what we have here are 15 Mr. Gaskin's notes, "Lite healthier," you 16 know, he reported on these, but, you know, I 17 don't recall all the details. This is his 18 question to them, or is that the 19 respondent's answer? It might have been 20 that Mr. Gaskin asked this question to the 21 respondent and then he said that the 22 respondent responded they say that, but he 23 doesn't think it works. 24 And so that means in the existing 25 marketplace this particular respondent</p>

<p style="text-align: right;">Page 298</p> <p>1 probably doesn't think that light cigarettes 2 are any less unhealthy than regular 3 cigarettes. 4 Q. Less healthy, correct? 5 A. Light cigarettes are -- 6 Q. He doesn't believe that they're any -- he 7 doesn't believe that they're any 8 healthier -- 9 A. Right. 10 Q. -- with regard to regular cigarettes? 11 MR. GALLAGHER: Hold on. 12 Objection. Now you're changing it around. 13 You're putting words in his mouth. 14 MR. GROSSMAN: No, I'm asking. 15 MR. GALLAGHER: No. He said "less 16 unhealthy," and you turned it around and 17 said "healthier." I don't think anybody in 18 this room is going to say cigarettes are 19 healthy, whether it's a lawyer or -- 20 MR. GROSSMAN: No, he doesn't 21 believe that light cigarettes are any 22 healthier than regular cigarettes. 23 MR. GALLAGHER: Same objection. 24 It's turning it around. That's not what he 25 said. If you want --</p>	<p style="text-align: right;">Page 300</p> <p>1 thinks they're half as bad but deep down he 2 knows there's no difference. It's all a 3 mind thing. It's just a label. It's all 4 marketing." 5 Do you see that? 6 A. Yeah, it's kind of interesting. Here's a 7 John who's 57, who was cut open four years 8 ago with aorta blocked from smoking and 9 couldn't walk, and stopped in the hospital 10 with just one puff. So here's a person who, 11 at least by his own statement, as recorded 12 by Mr. Gaskin, believes that smoking has 13 been quite unhealthy for him, and -- 14 MR. GROSSMAN: Move to strike as 15 non-responsive. 16 MR. GALLAGHER: Hold on. He's not 17 done. Go ahead. 18 A. -- and still said that. Now, if we get down 19 here, you know, it's kind of interesting 20 that, you know, he sort of knows in his -- 21 it's a very interesting interview. 22 Q. He knows in his heart what? 23 A. Okay. 24 MR. GALLAGHER: Hold on. 25 A. What's --</p>
<p style="text-align: right;">Page 299</p> <p>1 MR. GROSSMAN: Okay. I understand. 2 MR. GALLAGHER: -- the answer read 3 back -- you know where we're going -- 4 MR. GROSSMAN: I understand. 5 MR. GALLAGHER: -- with this so 6 let's not try it. 7 MR. GROSSMAN: I don't mean to 8 suggest that cigarettes are healthy. 9 BY MR. GROSSMAN: 10 Q. This respondent does not believe that light 11 cigarettes contain any lower health risks 12 than regular, what you refer to as regular 13 cigarettes; is that correct? 14 MR. GALLAGHER: Objection to the 15 form. 16 A. Okay. This respondent believes that light 17 cigarettes are no less unhealthy than 18 regular cigarettes, and there are many 19 people in our survey that have that belief. 20 Q. Next respondent, John, on the following 21 page, Hauser 042, and continuing into 043, 22 John has varying statements here on the 23 health effects of light cigarettes; is that 24 not correct? It says, "Not hurting himself 25 so bad. Denial." And on the next page, "He</p>	<p style="text-align: right;">Page 301</p> <p>1 MR. GALLAGHER: I'm going to the 2 object to the form that we're taking certain 3 snippets out of context of the entire thing, 4 and you're not letting Dr. Hauser -- 5 MR. GROSSMAN: No, I'm asking -- 6 MR. GALLAGHER: -- give you a more 7 comprehensive suggestion of what the total 8 interview says. Go ahead, Doctor. 9 THE WITNESS: Okay. 10 A. You know, he thinks they're half as bad, but 11 deep down he knows there's no difference, 12 okay. So it's kind of an interesting 13 statement that he sort of believes that, 14 well, maybe lights aren't quite as bad, but 15 deep down he kind of knows that they're no 16 different. And, you know, this is the 17 ambivalence that he's showing here in terms 18 of health risk. 19 Q. All right. Now, Doctor, farther down in his 20 interview notes it says, "Price choice, same 21 price. He likes what he has now, he's used 22 to it. The part on health is just part of 23 addiction denial. There's a lot of 24 psychology here." 25 Do you see that?</p>

<p style="text-align: right;">Page 318</p> <p>1 THE WITNESS: I see that. 2 MR. GALLAGHER: All right. 3 BY MR. GROSSMAN: 4 Q. And with regard to that, Dr. Hauser, that 5 paragraph is "So low tar and nicotine - 6 probably doesn't do a whole lot. There's no 7 such thing as a safe cigarette. Lites are 8 75 to 80 percent as dangerous." 9 Is that correct? 10 A. 047 here? Oh, yeah, okay. "Low tar 11 and nicotine probably doesn't do a whole 12 lot. There's no such thing as a safe 13 cigarette. Lites are 75 to 85 percent as 14 dangerous." 15 Q. And he further says, does he not, that he 16 doesn't believe advertisers and doesn't 17 believe the cigarette companies? Indeed, as 18 we quoted earlier, he says, "It's ludicrous 19 for a cigarette manufacturer to make any 20 sort of health benefits claim." 21 A. Well, what this person appears to be saying 22 is he thinks cigarettes are dangerous and 23 unhealthy, and as I've indicated, our goal 24 was to design questions that people could 25 answer, and the vast majority of our</p>	<p style="text-align: right;">Page 320</p> <p>1 regulars had the same degree of risk, he 2 would prefer lights; is that correct? 3 A. Well, ceretis paribus means all else equal, 4 so I agree with the statement as Mr. Gaskin 5 recorded here that this person, as many of 6 our respondents did, actually likes the 7 taste of lights. However, it doesn't mean 8 that they would not make a trade-off if 9 they could get a light cigarette that was 10 basically less healthy (sic). So if they 11 had a choice -- it does not say they could 12 not make a choice between a light cigarette 13 that had the health risk of regular 14 cigarettes and a light cigarette that had 15 the health risk of what should be perceived 16 as a light cigarette, less health risk. 17 So people can make that distinction, 18 and, you know, in this case he thinks that 19 lights are less healthy (sic) than regulars, 20 and he likes the taste. So there are two 21 reasons to smoke health -- to choose light 22 cigarettes. 23 Q. But if lights and regulars were identical in 24 health risk, he would prefer the lights? 25 MR. GALLAGHER: Objection to the</p>
<p style="text-align: right;">Page 319</p> <p>1 people -- the people who responded do think 2 that cigarettes are unhealthy. 3 Q. Next person, Heinz. 4 A. I would like to point out I do have to leave 5 in five minutes. 6 Q. You've pointed that out earlier. We're 7 moving as fast as we can. 8 MR. GALLAGHER: We'll end at 6:00, 9 Doctor. 10 Q. Heinz indicated at the bottom of the page 11 that he thinks that "Danger level of about 12 75 percent of regular." 13 Do you see that? 14 A. Yes. 15 Q. Starting above that, he said, "If lites 16 tasted worse, he wouldn't smoke them. It's 17 bad, so you might as well enjoy it. 18 "What makes it a lite? He doesn't 19 know." Later he says, "Taste - a light 20 taste, he likes it. So ceteris paribus, 21 he'd smoke lites instead of regulars due to 22 taste. Nicotine is the same." 23 Do you see that? 24 A. Yes. 25 Q. All things being equal, if lights and</p>	<p style="text-align: right;">Page 321</p> <p>1 form. 2 Q. That's what he said, correct? 3 A. What he has said is that, yeah, he said that 4 health risk affects his choice. He's also 5 said that taste affects his choice, and he 6 says that he prefers the taste of light 7 cigarettes to the taste of regular 8 cigarettes. That's perfectly consistent 9 with the results in the survey. 10 Q. Let's go to the next person, Jennifer. And 11 at the very bottom -- since you have a 12 couple of minutes, at the very bottom of her 13 interview notes it says, "Even if lites are 14 as unhealthy as regulars, she wants the 15 lite - taste, feel are better 'lighter'; is 16 that correct? Is that a better rendition of 17 what Mr. Gaskin took down? 18 A. Well, let's read the whole thing. 19 (Witness reviews document.) 20 A. Well, it says it was easier to inhale lights 21 when she was starting out. 22 Q. And that health wasn't a consideration when 23 she started? 24 A. It says that health was not a consideration 25 when she started. However, she then goes on</p>